

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

August 4, 1958

To Carleton L. Bradbury, Bank Commissioner

Re: Life Tenancy

We have your memo of July 21st, which reads as follows:

“Section 109 of Chapter 59, Revised Statutes of 1954, as amended, ‘Qualification of director’, reads as follows:

“No person shall be eligible to the position of a director of any trust company who is not the actual owner of stock amounting to \$1,000 par value, free from encumbrance.’

“A bank has written recently to inquire if an individual owning a life tenancy as described by the abstract attached would be qualified under Section 109.”

It would be our opinion that one whose only interest in stock of a trust company is a life tenancy with remainder to a remainderman would not be eligible to be a director of any trust company, where the condition is that such person must be “an actual owner of stock amounting to \$1,000 par value, free from encumbrance”.

While there is no question that such life tenant has ownership of such stock for certain purposes, the fact that at the death of the life tenant the stock then goes to the remainderman means that such stock is not “free from encumbrance”. It has been said that the possession of the life tenant in such a case is the possession of the remainderman. It has also been said that the possession of the life tenant is similar to that of a trustee and that the action of the remainderman upon the death of the life tenant is similar to that maintained by a beneficiary of a trust when an accounting is sought.

The use, then, by the life tenant of the stock is limited, and for that reason not free from encumbrance, in our opinion.

FRANK F. HARDING
Attorney General

August 6, 1958

To Frank Carpenter, State Treasurer

Re: Penobscot Bay Ferry Service

I have your request for an opinion concerning whether or not the proceeds from the issuance of bonds sold under the authority of Chapter 190 of Private & Special Laws of 1957 can be used to retire other bonds issued under authority of the same act.

In ordinary circumstances any proceeds in excess of those required to complete the purpose for which the bonds are sold are transferred to a fund for retiring the bonds. In this case, based on my understanding of the facts, my opinion is that the answer to your question is negative.

Sec. 14 of Article IX of the Constitution of Maine states: “. . . the legislature may authorize the issuance of bonds on behalf of the state at such times and in such amounts *and for such purposes* as approved by such action . . .” (italics supplied)