

# 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)

Chapter 210, Private & Special Laws of 1957, which amended Chapter 190, Private & Special Laws of 1957, provides in Section 2 that the cost incurred in establishing the ferry line or lines shall be paid by the State Treasurer from the proceeds of the sale of bonds. Section 5 of Chapter 210 restates the purposes for which the proceeds from the sale of bonds can be spent with reference to Section 10 of Chapter 210.

Section 10 under Section 5 provides: "Interest due or accruing upon any bonds issued under the provisions of this act and all sums coming due for payment of bonds at maturity shall be paid by the Treasurer of State."

Section 2 provides that the funds for retiring the bond will come from the toll income of the ferry service.

I am unable to find any authority in the act for the proposition that you cite. It is my opinion that it is not proper to go beyond the purposes set out by the legislature. In support of this statement please refer to the memo of December 4, 1951, from the Attorney General to the State Treasurer and the Opinion of the Justices cited therein.

GEORGE A. WATHEN  
Assistant Attorney General

August 14, 1958

To Ober C. Vaughan, Director, Personnel

Re: Ferry Service—Maine Port Authority

We have your memorandum of July 28, 1958, which reads as follows:

"Pursuant to our discussion of this date, may I request your opinion as to whether or not Chapter 210, Section 9, Private and Special Laws of 1957, implies that employees under this operation would be hired under the authority of the Personnel Board."

The employees of the Maine Port Authority to be employed under the provision of Chapter 210, Section 9, Private & Special Laws of 1957, are not subject to the personnel law, but are to be employed in the same manner in which the Authority usually employs its employees.

Chapter 114, Section 2(a), Private & Special, 1929, provides that:

"The board of directors (of the Authority) shall determine and fix the salary of all other officers and employees of the . . . Authority."

Section 4(a) provides that:

"The . . . Authority shall employ such engineers, clerks . . . and other employees as it may deem necessary to carry out the purposes of this act and shall determine their duties and compensation."

Chapter 190, Section 11, Private & Special, 1957, imposes upon the Authority the duty of operating the ferry line.

Employees necessary to carry out the added purpose should be employed in the manner the Act provides, which would preclude their being considered as classified employees.

JAMES GLYNN FROST  
Deputy Attorney General