

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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The trust impressed upon the members of the Board of Trustees is a solemn one. As you point out, Revised Statutes of 1954, Chapter 63-A, section 13-I, states that "The general administration and responsibility for the proper operation of the retirement system and for making effective the provision of this Chapter are vested in a Board of seven trustees."

In order that there would be effective administration of the laws, the legislature granted to the Board specific powers: Appoint an executive secretary, a medical board, an actuary, employ investment counsel, etc. Chapter 63-A, section 13, R. S. 1954.

The legislature also authorized the Board, in one instance, to appoint a Finance Committee empowered to withdraw or deposit securities from or with such custodian as the Board contracted with, and the custodial care and servicing of the negotiable securities belonging to any fund of the Retirement System.

It appears to us that the responsibility of any such Investment Committee would be much greater than that of the Finance Committee above mentioned. The fact that the legislature felt compelled to enact a law authorizing the Board of Trustees to appoint a Finance Committee compels us to the opinion that the legislature should consider the wisdom of authorizing appointment of an Investment Committee.

While a great body of law exists with respect to the Board of Directors of a corporation working through committees, we point out that general business corporations organized in Maine are expressly authorized by statute to function through committees.

Chapter 53, section 32, provides that: ". . . Directors of corporations may act through committees whose powers shall be defined in the by-laws."

We do not believe that the power of the trustees set forth in section 14-I of Chapter 60-A "subject to like terms, conditions, limitations and restrictions, (as to savings bank) said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments . . . as well as the proceeds of such investments"—extends to the right of the Board to appoint an Investment Committee, a power extended to savings banks. This section deals not with the composition of the Board, but rather the kinds, quantities, etc. of investments.

JAMES GLYNN FROST  
Deputy Attorney General

November 1, 1960

To: Michael A. Napolitano, State Auditor

Re: Disposition of Forfeited Cash Bail

We have your memo of September 15, 1960 in which you state that "During our audits of the courts it has been noted that forfeited cash bail on cases pertaining to Inland Fish and Game as well as Sea and Shore Fisheries violations has been remitted to the county treasurer, however, said forfeitures are being retained by the county."

You inquire if such forfeited cash bail should not be remitted to the State.

All forfeited cash bail monies collected for violations of the Inland Fish and Game laws shall be paid by the County Treasurer to the Treasurer of State and credited to the Department of Inland Fisheries and Game.

Revised Statutes of 1954, as amended, Chapter 37, section 129, reads as follows:

“Collection and disposition of money received under this chapter. All fines, penalties, officers’ costs and all other moneys recovered by the court under any provision of this chapter shall accrue to the Treasurer of State and shall be paid into the treasury of the county where the offense is prosecuted. All officers’ fees taxed against a respondent, if any, under any provision of this chapter, which are not paid or recovered from the respondent shall not be assumed or paid by the county where the offense was committed. All fees, fines and penalties recovered and money received or collected, and including moneys received from sale, lease or rental of department owned property shall be paid to the Treasurer of State and credited to the department for the operation of fish hatcheries and feeding stations for fish, for the protection of fish, game and birds, information and education on conservation and for printing the report of said commissioner and other expenses incident to the administration of said department, and shall be expended by the said commissioner for the purposes for which said department is created.”

We also draw to your attention the last paragraph of section 132 of said Chapter 37:

“All money forfeited shall be immediately forwarded to the Commissioner.”

The controlling law with respect to forfeitures of cash bail in cases of violation of Sea and Shore Fisheries laws is Revised Statutes of 1954, Chapter 37-A as enacted by Chapter 331, Public Laws of 1959, section 94. The first paragraph of section 94 reads as follows:

“Recovery of fines, fees and forfeitures; disposition. This section applies to all fines, fees, forfeitures and penalties authorized by this chapter, except those authorized for municipal ordinances.”

With respect to disposition of fines, fees, and forfeitures, section 94, subsection II provides that:

“All of them, except where otherwise expressly provided in this chapter, accrue to the commissioner and he shall pay them to the Treasurer of State.”

In view of such law, we are of the opinion that forfeited cash bail recovered as a result of the violation of the Sea and Shore Fisheries laws, shall, unless otherwise specifically provided, be paid to the Commissioner of Sea and Shore Fisheries and by him paid to the Treasurer of State.

JAMES GLYNN FROST  
Deputy Attorney General