STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

joint ballot of the Senators and Representatives in convention, and further provides that vacancies which shall afterwards happen shall be filled by the Governor with the advice and consent of the Council from the same District in which the vacancy occurred and the oath of office shall be administered by the Governor, said Councillor to hold office until the next convening of the legislature. The Constitution then provides — " . . . but not more than one counsellor shall be elected or appointed from any district prescribed for the election of senators; . . . "

The term of office of a Councillor expires at midnight following the first Wednesday of January. *Opinion of the Justices,* 70 Me. 570. If no legislative action is taken to continue the Executive Councillor Districts or recreate other Districts, the legislature in joint convention on the first Wednesday of January may choose Councillors provided that no Senatorial District shall have more than one Councillor. In other words, 7 of the 16 Senatorial Districts would be entitled to a Councillor.

3. If it is the desire of the Legislature to provide for the continuation of the provisions of Chapter 109, Resolves 1951, would you kindly advise me as to how, you believe, this could best be accomplished?

Answer: This office believes that the 7 Councillor Districts should be set forth in the Revised Statutes, Chapter 11, which relates to the Executive Department and the Council. If this is done, it will not be necessary for someone to remember every 10 years to present a Resolve to the legislature. Normally, there would be no one person who would have this procedure of apportionment by Resolve on his calendar 10 years hence.

It would probably be advisable to have a Resolve setting forth the years in which each county within a Councillor District is to be entitled to a Councillor. It would be most difficult to word this matter in the Revised Statutes, and would be a method of assuring the small counties in a District of proportional representation. Even if a legislature forgot to make this apportionment after a ten-year period, at least the Councillor District would have its proper representation.

In any event, it would appear advisable and probably necessary that some action relative to Councillor Districts be taken at the coming special session. It would be legally correct to enact a Resolve in the form of Chapter 109, Resolves of 1951, if the legislature does not wish to add a section to Chapter 11 setting forth the Councillor Districts.

GEORGE C. WEST

Deputy Attorney General

October 18, 1961

To: Asa Gordon, Coordinator of Maine School District Commission

Re: Application for the Formation of a School Administrative District by Superintending School Committee

This is in answer to your request for an opinion relative to the application for the formation of a school administrative district under Section 111-F of Chapter 41 of the Revised Statutes, when a community school district proposes to

form a school administrative district under Chapter 41, Section 111-F, subsection IV.

The question is whether or not the superintending school committee of the community school district should make the recommendation to the Maine School District Commission for the formation of the School Administrative District or whether the towns within the community school district who no longer have superintending school committees should elect new superintending school committees for the purpose of recommending the formation of the School Administrative District.

It is our opinion since the superintending school committee of the community school district is the body responsible under the law for the education of the children within the community school district and the superintending school committees of the various towns are not in existence and have no responsibility, the proper agency to make the recommendation is the superintending school committee of the community school district.

RICHARD A. FOLEY
Assistant Attorney General

October 24, 1961

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Bond-Mortgage Swaps

Your memo of October 6 has asked a question relative to the swapping, by banks, of bonds for FHA or VA mortgages and how this transaction shall be carried on the books of the bank.

The typical situation seems to involve a swap at current market price, usually below the par value figure and at a time when the market value of the bonds is below the actual cost of the bonds to the bank.

The question is whether the mortgages shall be entered on the bank's records at their current market value or at their par or face value.

The Revised Statutes, 1954, Chapter 59, section 19-J, II, provides in part:

> "No item of assets shall be entered on the books of the bank at a figure in excess of its *actual cost* to the bank; . . . " (Emphasis supplied)

This language seems to be very definite, clear cut, and not susceptible of any ambiguous meaning. Any asset purchased or obtained by the bank must be carried on its books at no more than its *cost* to the bank. The matter of *value* does not enter the picture. The bank's records must reflect the *cost* to the bank. The asset may have a *value* in excess of the *cost* but the latter is the figure to be carried on the books of the bank.

In the event a bank swaps bonds for mortgages worth an equivalent amount, at the current market price, that figure represents the *cost* of the mortgages and is the figure to be carried on the books of the bank.

This is confirmed by the next clause following that quoted above, which reads:

> "nor shall the book value of any such item be thereafter increased,