MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

December 7, 1961

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

Re: Circumvention of borrowing limitation on industrial banks

Reference is made to your memo of October 18, 1961, concerning the use of a certificate of investment by an industrial bank to correct a statutory violation of borrowing in excess of its capital, surplus and undivided profits. The section in question, R. S. 1954, Chapter 59, § 206, IV, reads:

> "Sec. 206. Prohibitions. No industrial bank shall: IV. Be at any time indebted for borrowed money to an amount in excess of its capital, surplus and undivided profits, except that by vote of a majority of its entire board of directors or executive committee setting forth the reasons therefor, and upon receiving the written consent of the bank commissioner thereto, it may borrow money to redeem its certificates of investment or prevent loss by sale of assets, and may rediscount notes, or pledge bonds, notes or other securities as collateral therefor. Copies of all votes authorizing such excess borrowing shall be promptly forwarded by the secretary to the bank commissioner. Rediscount shall be considered as borrowed money for the purpose of this subsection."

An industrial bank borrowed a sum of money from its parent company. The loan to it was in excess of its capital, surplus and undivided profits. The bank now seeks to correct this violation by issuing a certificate of investment to its creditor. The proposed certificate reads as follows:

"INVESTMENT CERTIFICATE NO. 1
of
COMMERCIAL CREDIT PLAN, INCORPORATED

"This is to certify that COMMERCIAL CREDIT COMPANY (a Delaware corporation) is the owner of Investment Certificate No. 1 of COMMERCIAL CREDIT PLAN, INCORPORATED, herein called Issuer (a Maine corporation).

"The principal amount of this Investment Certificate No. 1 is $200,000.00.

"This Investment Certificate shall bear interest at the rate of 5 1/4% per annum, payable monthly on the first day of each month, beginning ...., 1961.

"Issuer may redeem this Investment Certificate, in whole or in part, without prior notice to the holder hereof.

"This Certificate is transferable only upon the books of Issuer upon presentation with proper endorsement thereon.

"In witness whereof Issuer has caused this Investment Certificate to be signed by duly authorized officers this 10th day of October, 1961.

COMMERCIAL CREDIT PLAN, INCORPORATED

By /S/ J. M. Harris
Vice President

ATTEST:
S/ C. D. Winter
Secretary

The legislature has very clearly spelled out the limit up to which an industrial bank may borrow. It has also spelled out with equal clarity the exception to this limitation upon its borrowing capacity. There can be no question that the legislature intended that an industrial bank cannot owe more than the total of its capital, surplus and undivided profits with the exception noted.

The issuance of a certificate of investment covering the loan cannot cure this violation. The certificate of investment appears to be an instrument which simply acknowledges the debt but does not extinguish it. The bank still owes money in excess of its capital, surplus and undivided profits. As long as the certificate of investment is outstanding and unreduced to the limit allowed by Chapter 59, § 206, IV, the bank is in violation of that statute.

There appear to be three ways to remedy this situation. The first would be for the bank to increase its capital. The second would be to work out a system of reducing the loan from the parent company until it is down to the statutory limit. The third would be a combination of the first two.

Admittedly any of these three methods will take time. None of them can be worked out at once. It does seem necessary, however, that the bank take affirmative steps to remedy situation.

GEORGE C. WEST

Deputy Attorney General

December 12, 1961

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Foundation Subsidy Aid for S. A. D. #1

This is in answer to your request for an opinion whether or not S. A. D. #1 forfeits the 10% bonus provided in section 237-G, chapter 41, if the district fails within four years of its formation to provide a pre-primary program.

Sec. 237-G provides in part:

> "In the event that the School Administrative District, within 4 years of the time of its formation, fails to provide the following, the additional bonus payable under section 237-G shall not be paid the district thereafter until such time as such provisions are made:
>
> "I. A program which includes pre-primary or kindergarten through grade 12;"

You inquire whether the addition of the towns of Castle Hill, Chapman or Mapleton to S. A. D. #1 under the provisions of Section 111-P of chapter 41 is a "formation" of a new district within the meaning of section 237-G which would cause the four year period to commence anew.

It is my opinion that the addition of a municipality under section 111-P, supra, is not a "formation" of a district.

RICHARD A. FOLEY

Assistant Attorney General