STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

the aforementioned section 218, make the second note void. It must be noted, however, that this whole opinion is predicted on the aggregate total of the two notes being in excess of $150. Any combination of loans with an aggregate total of under $150 would not be in violation of this chapter.

You give the following hypothetical, and ask whether the merger clause you suggest would rectify the above situation:

> "A licensee makes a loan to borrower A. Subsequently, borrower B wishes to obtain a loan. The licensee requires borrower B to have a co-maker before he will grant the loan. Borrower B brings borrower A to the licensee's office to be his co-maker. The licensee has both sign a note containing a clause which in effect says that should borrower A be called upon to pay this loan while he still has a loan of his own, the interest on the two loans would be computed as though they were one loan."

By introducing this clause into the note as it is worded you could still be in violation of the aforementioned section 218, in that the signer who already has a loan outstanding is still contracting to pay the second note at the statutory interest rate, regardless of the fact that "if he is called upon to pay" he would pay as if both loans were one. The violation occurs when the contract is made, and not when the co-signer is called upon to pay. This can be rectified, however, by putting in a clause which in effect states that if any of the signers have another loan outstanding with the same company then as to them the interest on both loans shall be determined as if there is only one loan. By doing this you would effectively have made the second or subsequent notes valid in that they would all be figured on the statutory interest rate as if they were one note for the purposes of interest. Introducing such a merger clause into the note would seem to be advisable in that the occasion may arise where a person inadvertently becomes a co-maker while he has his own note outstanding.

WAYNE B. HOLLINGSWORTH

Assistant Attorney General

March 12, 1962

Harvey R. Pease
Clerk of the House of Representatives
State House
Augusta, Maine

Dear Harvey:

In answer to your letter of March 7th to this office as to your duties relative to interim committees:

By statute, Revised Statutes, Chapter 10, § 7, you are the executive officer of the legislature when it is not in session. One of your duties is to approve accounts for payment. This would include accounting of interim committee expenses, etc.

I see no reason why either of the committees referred to cannot hire clerk or secretarial help to carry out their duties. However, such total expense for clerical or secretarial help, plus travel and meal expense, should not exceed $1,000 in either case. If that amount is exceeded then it shall be up to the 101st

Legislature to decide to reimburse or not. No extra funds should be allocated from the present legislative fund.

Very truly yours,

FRANK E. HANCOCK

Attorney General

March 13, 1962

To: Irl E. Withee, Deputy Commissioner, Banks and Banking

Re: Legal Requirements Concerning Savings Passbooks

"A mutual savings bank is considering a payroll savings plan whereby an enrollment card will be signed by the depositor authorizing the employer to deduct a certain amount from the pay each week."

"With the exception of the issuance of a passbook, the savings transactions will be the same as used in the bank's regular savings accounts. The bank will provide quarterly statements to the depositors under the Payroll Savings Plan which will itemize all of the transactions on the account for the quarter. These will be mailed to them at their homes."

The question asked is whether a savings bank must issue a formal passbook to each savings depositor in which to record all transactions on a savings account.

There is no specific provision in the law requiring banks to issue passbooks for savings accounts.

There are several references to passbooks in Chapter 59. Chronologically they are as follows:

1. Sec. 19-G, VII, provides a method for issuing a new passbook when the original is lost. The only significant wording in this section is the following:

> ". . . . the delivery of such duplicate book relieves said savings bank or trust company from all liability on account of the missing original book of deposit."

Probably the liability is that stated in *Sullivan v. Lewiston Institution for Savings,* 56 Me. 507 at 511. Bank officers must use reasonable care and diligence to ascertain that person presenting passbook is the same person named thereon.

2. Sec. 19-H, II, 2, provides that a savings deposit book issued by any savings bank may be used as collateral for a loan.

3. Sec. 19-L, I, provides:

> "The Bank Commissioner, at least once in every 3 years, shall cause the books of the saving depositors in savings banks and in every trust company to be verified by such methods and under such rules as he may prescribe."

4. Sec. 82 is a part of the law relating to liquidation procedures and provides that the treasurer of a savings bank shall enter certain reductions on individual passbooks as they are presented.

These sections of the banking law assume by implication that individual passbooks are issued by all savings banks. Our court in *White v. Cushing,* 88 Me. 339 at 345 said:

> "The order in question was drawn upon a savings bank, and it is common knowledge that all banks in this State have a by-law which all