STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

Therefore, it is our opinion that deductions for Union dues can be made only with the approval of the Governor and Council and upon the subsequent signed authorization of the individual employee.

THOMAS W. TAVENNER

Assistant Attorney General

March 15, 1962

To: David Garceau, Commissioner of Banks and Banking

Re: Investment of Money of Municipality borrowed in anticipation of Taxes

You have asked the question: Can a Maine municipality properly invest in United States Government 90-day bills or other short-term United States securities, the money that municipality borrows in anticipation of taxes?

Chapter 90-A, § 21, directs the use of "reserve funds, trust funds and all permanent funds" as follows:

"I. Deposited in savings banks, trust companies and national banks in the State.

A. The balance at any time in any bank shall not exceed the amount insured by the Federal Deposit Insurance Corporation. (1957, c. 174.)

II. Invested in shares of building and loan or savings and loan associations organized under State law.

III. Invested according to the law governing the investment of the funds of savings banks in section 19-I of chapter 59.

A. For the purpose of this section, the words "deposits of a bank" or their equivalent as used in section 19-I of chapter 59 mean the total assets of the reserve fund, trust fund or other permanent fund being invested, but the limitation concerning the maximum amount which may be invested in a security or type of security under section 19-I applies only to an investment in that security or type of security which exceeds $2,000. (1957, c. 244)"

Section 19-I of chapter 59 refers to government obligations.

We are of the opinion that money borrowed in anticipation of taxes becomes a part of the municipality's general permanent fund and may be invested according to Chapter 90-A, § 21.

It is our understanding that this is becoming fairly general practice throughout the State.

FRANK E. HANCOCK

Attorney General

March 15, 1962

To: David H. Stevens, Chairman, State Highway Commission

Re: Land Damage Board Hearings (c. 23, R.S. 1954, as amended by c. 295, P.L. 1961)

A letter dated March 13, 1962 from the Division Engineer of Region One,

Bureau of Public Roads, has raised a question as to the legality of Land Damage Board hearings held by two members of the Board. In particular, the question is raised as to the legality of such hearings when the chairman, an attorney, is absent.

A hearing held by two members of the Land Damage Board is legal. It is not necessary that one of the two holding a hearing be the chairman, except in the instance where the chairman has been unable to administer the oath to the County Commissioner member.

The last sentence of the third paragraph of section 20-I reads:

> "A majority of the board, being present, may determine all matters; provided, however, the chairman shall resolve all questions of admissibility."

It is very obvious that the law allows two of the three members to "determine all matters." This is a very clear statement that any two members may hold a hearing and decide the amount of the award. If there is a question of admissibility of evidence this is to be determined by the chairman. There is no requirement that the determination of admissibility of evidence be made at the hearing. Such determination may be made after the transcription of the record.

Such practice has some precedent in Maine. In the taking of depositions counsel may object to a question, an answer, or to certain evidence. The objection is noted on the record. When the deposition is offered in court, the justice then rules on the admissibility. So here, the two non-legal members will hear the evidence, objections to be noted in the record, and the chairman when he reviews the record can rule whether or not the evidence is admissible.

The problem of admissible evidence is not too great because of the provisions of the first two sentences of the third paragraph of section 20-I. The only evidence not admissible is that which is "immaterial, irrelevant, and unduly repititious testimony." The determination of these factors is not too difficult.

It should be pointed out that in the last paragraph of section 20-I is the following language:

> "He (county commissioner) shall be sworn by the chairman of the Land Damage Board. . . . "

There is no stated time when this member of the Board must be sworn. The only requirement that can be read into the law is that he be sworn *before* assuming his duties for the particular hearing or hearings on which he will be sitting. Except in cases of emergency, the chairman can arrange to administer the oath to the particular county commissioner at some date prior to the hearing or hearings.

GEORGE C. WEST

Deputy Attorney General

March 16, 1962

To: S. F. Dorrance, Assistant Chief of Division of Animal Industry, Agriculture

Re: Issuing of Spay Certificates to Government Veterinarian

We have your request of March 6, 1962 for an opinion as to whether your office should issue spay certificates to Government Veterinarians whose practice is limited to animals belonging to military personnel and/or their dependants.