

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

stores to apply for and receive a license for the sale and distribution of malt liquor.

As stated earlier, the Commissioners of Pharmacy have the power to make rules and regulations so long as those rules and regulations are not inconsistent with the laws of the State. If the laws of this State allow drug stores to apply for malt liquor licenses, any regulation promulgated by the Commissioners of Pharmacy which attempts to modify this right would be inconsistent with Chapter 61 and would, therefore, be null and void.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General

April 13, 1962

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

Re: Certificates of Deposits as Legal Investments for Savings Banks

In your memo of April 6, 1962, you ask the following question:

May a savings bank legally invest its funds in certificates of deposit with a commercial bank?

Answer: No.

Chapter 59, section 19-I provides that savings banks may hereafter invest their funds in "securities" as listed. In other words, savings banks may only invest in "securities."

We find that in two Maine cases, *Hatch v. First National Bank of Dexter*, 94 Me. 348, and *Cooper v. Fidelity Trust Co.*, 134 Me. 40, our court has said that a certificate of deposit is in legal effect a negotiable promissory note given by a bank to a depositor.

A negotiable promissory note is not a "security." Therefore, a savings bank may not legally invest its funds in certificates of deposit.

GEORGE C. WEST

Deputy Attorney General

April 13, 1962

To: Austin H. Wilkins, Commissioner of Forestry

Re: Financial responsibility for fire control

We have your request for an opinion as to the financial responsibility of various political subdivisions for the suppression of forest fires. As we understand your question, you are asking our interpretation as to how the costs of fire control are to be divided both before and after the declaration of a state of emergency. This opinion will take into consideration the provisions of R.S., Chapter 12, Section 20, R.S., Chapter 97, Section 60, and the agreement between Civil Defense and the Forest Service signed in 1954 by Commissioner Nutting.

Revised Statutes, Chapter 97, Section 60, provides that each town shall pay

for the cost of fire control up to 2% of the assessed valuation of that town. The State shall then reimburse the town for one half of this limited cost. This Section further provides that the State alone shall be responsible for all of the expense of fire control over and above the 2% town limit. This is the financial procedure set up by the Legislature. It applies without any reference to an emergency and constitutes a duty imposed on the towns of the state by the state legislature. This law cannot be modified by any agreement signed by department heads.

Revised Statutes, Chapter 12, Section 20, provides that a fund be established upon which the Governor can draw in case of emergency. Nowhere in this Chapter are the financial arrangements as set forth above altered or amended.

The agreement between the Civil Defense agency and the Forest Service purports to transfer the financial responsibility for fire control from the towns to the state in case of an emergency. Such a procedure is not specifically authorized under any of the provisions of Chapter 12, and is in direct contradiction to the provisions contained in Chapter 97. For this reason it is our opinion that the provisions of Chapter 97 are controlling and that the towns must share in the costs of fire control as outlined above, even though a state of emergency may have been declared to exist.

THOMAS W. TAVENNER

Assistant Attorney General

April 16, 1962

To: Captain Willard R. Orcutt, Maine State Police

Re: Inspection of Motor Vehicles—"Point of distribution."

Question: Should the point of distribution be construed to mean more than one point, if dealers are involved in buying the vehicle, and until the customer finally purchases the vehicle, or should it be construed to mean only the first dealer to purchase the vehicle and bring it to his place of business.

Answer: The point of distribution should be construed to mean more than one point, dependent upon the circumstances of each sale.

Chapter 22, section 45, provides in part:

"Every person who is the owner or in control of a motor vehicle registered and operated upon the highways of the State shall submit such vehicles for semiannual inspection as provided for in this section and sections 46 and 47. . . ."

"Said inspection shall not apply to motor vehicles owned and registered in another state nor to new or used motor vehicles being driven by a dealer or holder of a transit registration certificate or their authorized representative from the point of distribution to his place of business.

"No dealer or holder of a transit registration certificate in new or used motor vehicles shall permit any such vehicle owned or controlled by him to be released for operation upon the highways until it has been inspected. . . ."