

MAINE STATE LEGISLATURE

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yes

September 11, 1962

Irl E. Withee, Deputy Commissioner

Banks & Banking

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Saving Deposits in Industrial Banks

** See also opinion dated
April 24, 1963 for
further interpretation.*

The Banking Commissioner has asked the question as to the right of industrial banks to accept savings deposits.

The laws relating to industrial banks is contained in Chapter 59, sections 200 to 208, inclusive. Section 205 provides in part:

"In addition to the powers conferred upon corporations by the general corporation law, every industrial bank shall have the following powers:
I. . . . , and in addition to receive uniform weekly, semimonthly or monthly installments on its certificates of indebtedness or deposit purchased by the borrower simultaneously with a loan transaction or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such installments."

In section 208 is found the following statement:

" . . . , section 19-L, subsections I and II, . . . shall apply to industrial banks."

Section 19-L, subsection I, provides that the Bank Commissioner

"once in every 3 years shall cause the books of the saving depositors in savings banks and in every trust company to be verified etc."

It further provides that the Bank Commissioner and his employees shall have access to every part of the savings bank and trust company and to all papers, books, etc. Also that information obtained through such verification is confidential. Subsection II contains nothing relevant to deposits.

The foregoing provisions of the law are the only ones which relate to industrial banks accepting deposits. To better understand these provisions it may be well to quote from the provisions of the law relating to savings banks and trust companies. Section 19-D, II, E, provides in part:

"II. Every savings bank, subject to the restrictions and limitations contained in this chapter, shall have the following powers:

E. To receive and repay deposits, to lend and invest the same, etc."

Section 90, Chapter 59, provides in part:

" . . . with power:

I. To receive on deposit, money, coin, bank notes, evidences of debt, accounts of individuals, companies, etc."

The legislature, by the use of different language, has made a distinction between industrial banks, savings banks and trust companies. In the cases of the savings banks and the trust companies the legislature has expressly stated they may "receive deposits" or "receive on deposit." The legislature is not so express and clear in its expression relating to industrial banks. The conclusion must be that the legislative intent was to deny the right to "receive deposits," as such, to industrial banks unless there is some other wording that means the same thing.

This office cannot find any. It seems clear that the law provides that industrial banks may sell its certificates of indebtedness or deposit. (These terms are used synonymously in the law.) The question arises as to whether the purchase of such certificates are savings deposits.

In the case of Cooper v. Fidelity Trust Co., 134 Me. 40 at 49, the court said:

"We find no provisions in the statutes of this State which compel the conclusion that as a matter of law certificates of deposit in the usual form payable on time or

on certain notice represent commercial transactions. In this respect, the statutes of Maine and Massachusetts are different. We concur, however, in the view that, nothing to the contrary appearing, such certificates of deposit, as well as those payable on demand, usually indicate on their face that the deposits for which they were issued were of that character. History places them in that category and common knowledge establishes the classification as the long-prevailing rule of banking. Pierce v. State National Bank of Boston, 215 Mass., 18, 101 N.E., 1060; 3 Daniel on Negotiable Instruments (7th ed.), 2043; 1 Morse on Banks and Banking (6th ed.), Sec. 297. The issuance of certificates of deposit for savings deposits seems to be of comparatively recent origin, and the exception rather than the rule. We are of opinion that, when, as here, certificates of deposit recite the receipt of deposits without in any way defining their character, it must be presumed that the deposits which they represent were made and accepted as commercial deposits."

Absent legislative authority to accept savings accounts industrial banks may not do so. They may sell certificates of deposit or indebtedness but may not accept saving deposits as commonly known to the general public. Certificates of deposits sold by industrial banks cannot recite characteristics which would indicate an intention to create savings deposits.

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