STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

September 12, 1962

To: Philip R. Gingrow, Banks and Banking

Re: Sale of Fire Insurance by Small Loan Licensees

You have asked our opinion to three questions relating to the sale of fire insurance by small loan licensees covering personal property pledged as collateral by borrowers.

Question 1: May a licensee engaged in the making of loans regulated by sections 210 through 226 of chapter 59 require insurance on household goods or appliances pledged by a borrower as collateral for such loan?

Answer: Yes.

Question 2: May the lender place such fire insurance at the option and voluntary approval of the borrower so long as the borrower has no other valid and collectible insurance to assign to the lender and so long as the lender places such insurance with an agent and company qualified to transact insurance business in the State of Maine and on policy form and rates duly approved by the Insurance Commissioner?

Answer: Yes, with the qualifications set forth in Question 3.

Question 3: If the licensee may under (1) and (2) above, place fire insurance on Household Goods or Appliance collateral, may said licensee be allowed a reasonable Experience Credit Refund (similar to group life or other master policy type earned coverages) premiums, to defray administrative costs such as typing and issuing customers Memorandums of Insurance, mailing, preparation of reports, computations and refunds, etc.?

Answer: No.

Chapter 59, section 218, seems to cover this particular matter. This section provides in part:

> "In addition to the interest herein provided for, no further or other charge or amount whatsoever for any examination, service, brokerage, commission or other thing, or otherwise, shall be directly or indirectly charged, contracted for or received, except lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing or recording in any public office any instrument securing the loan, which fees may be collected when the loan is made, or at any time thereafter. If interest or charges in excess of those permitted by sections 217 and 218 shall be charged, contracted for or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever."

In view of this provision of the law and especially the last sentence, we cannot say that such practice would be permissible. Even if this office believed that experience credit refund premiums were permitted by section 218, we could not sanction this practice. To do so might well jeopardize all loans made with such fire insurance involved if such a situation were ever litigated.

Incidentally, if the legislature should amend section 218 to allow such a practice the Memorandum of Insurance would require amendment. Item 4 of the Memorandum does not correspond with item IV of the Master policy or the

Maine Standard Fire Insurance Policy. Item 5 of the Memorandum should also be clarified.

GEORGE C. WEST

Deputy Attorney General

September 14, 1962

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

Re: Legality of Mortgages Insured by the Maine Industrial Building Authority

You have asked for an opinion relative to restrictions contained in the banking law applicable to trust companies and savings banks as they relate to mortgages insured by the Maine Industrial Building Authority.

Chapter 38-B, section 12, provides:

> "Mortgages insured by the authority of this chapter are made legal investments for all insurance companies, *trust companies,* banks, investment companies, *savings banks,* executors, trustees and other fiduciaries, pension or retirement funds." (Emphasis supplied)

Thus the law provides that trust companies and savings banks may invest in mortgages insured by MIBA. The banking law has sections specifically applicable to trust companies and to savings banks. First, we will examine the law relating to savings banks to determine what, if any, restrictions are applied to savings banks investing in MIBA insured mortgages.

Chapter 59, section 19-H, is the pertinent section relating to loans. Subsection I of this section pertains solely to mortgages. This subsection provides that savings banks may make loans secured by first mortgages of real estate in an amount not exceeding 66 2/3% of its appraisal, but may go to 75% of its appraisal if the note provides for regular monthly payments of interest and principal so as to repay the loan within 25 years or requires full payment within 3 years.

Thus, we have a restriction as to the amount a savings bank may loan on a first mortgage to one person. Does this restriction apply to an MIBA insured mortgage?

Section 19-H, I, C, provides in the first sentence:

> "Without regard to any other provisions of law, savings banks of this State are authorized to *make* or buy and sell *any loan, secured* or unsecured, which is *insured* or guaranteed in any manner in part or in full . . . or *by this State or any instrumentality thereof* . . . . " (Emphasis supplied)

The above provision means that a savings bank may *make* a loan without regard to any restrictions imposed upon the *making* of a loan when the mortgage securing the loan is insured by MIBA. In short, the 66 2/3% or 75% restrictions contained in section 19-H, I, A and B, do not apply to MIBA insured mortgages.

Section 19-H, I, E, provides that a savings bank shall have no more than 66 2/3% of its deposits invested in real estate mortgages; except it may invest up to 80% therein, provided the excess over 66 2/3% of its deposits is invested in real estate mortgages insured by MIBA. This section speaks for itself.