STATE OF MAINE

# REPORT

OF THE

# ATTORNEY GENERAL

for the calender years

1961 - 1962

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.

The above are the only restrictions or limitations relative to real estate mortgages held by savings banks.

We now turn to the law relative to trust companies. The only restriction in the law concerning loans by trust companies is contained in section 112. This section provides that no trust company shall loan to any person, firm, etc., amounts in excess of 10% of its total capital, unimpaired surplus and net undivided profits unless secured by collateral of value equal to the excess of said loans above said 10% "and the total amount of loans to any person, firm, business syndicate or corporation shall at no time exceed 20% of said total capital, unimpaired surplus and net undivided profits;"

Section 91 reads exactly the same as section 19-H, I, C, quoted supra. The same interpretation must be made of section 91 as of section 19-H, I, C. Therefore, the 20% limitation of loans to any one person, firm, business syndicate or corporation does not apply to a loan or loans secured by an MIBA insured mortgage.

GEORGE C. WEST

Deputy Attorney General

September 18, 1962

To: Keith L. Crockett, Director, Division of Field Services, Education Department

Re: Reimbursement for Costs of Architects Fees for Developing School Plans

This is in answer to your memorandum of September 11, 1962, in which you propose the following questions:

1. Is the reimbursement for cost of school surveys and school plans mandatory under Section 235?

Answer: Yes.

2. Does Section 237-H supersede Section 235 in relation to the costs for school surveys and school plans with specific reference to school administrative districts and single administrative school units which are eligible for state aid for school construction?

Answer: No.

3. Do Sections 235 and 237-H imply that reimbursements should be made in both instances thus, in a sense, resulting in a double subsidy?

Answer: No. Subsidy under section 237-H is paid upon the cost to the administrative unit of "architectural. . . expenses, plans, specifications, estimates of cost. . . " in construction of a school building. The grant made by the State to an administrative unit under section 235 is not a "cost" to the Administrative Unit under section 237-H and the grant should not be included as "capital outlay" under 237-H.

4. When a single administrative unit becomes a part of a school administrative district, should it receive reimbursement of itself or should the district be reimbursed under Section 235? (It is conceivable that five towns could be formed into a district and each town have a new school built for elementary purposes. Should the district receive up to $2,000 for any two projects or be reimbursed for each project under Section 235?)