STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

March 18, 1963

To: R. W. MacDonald, Chief Engineer, Water Improvement Commission

Re: State Grants to Sewage Treatment Facilities

You have asked if the Water Improvement Commission may limit the state contribution to a municipal or quasi-municipal pollution abatement construction program to a percentage of the cost of eligible items less than the 30% prescribed by federal law.

Answer: Yes.

Chapter 79, section 7-A, provides:

> "The Water Improvement Commission is authorized to pay an amount equal to the total federal contribution under P. L. 660, 84th Congress, to the expense of a municipal or quasi-municipal pollution abatement construction program which has received federal approval and federal funds for construction."

This statute is "authorization" for the Water Improvement Commission to pay an amount equal to the total federal contribution under a given law. The federal contribution under this particular law is 30% or $250,000, whichever is smaller, of the estimated cost of construction. The important verb in this statute is "authorized." Generally the verb "authorize" denotes authority or permission to do a certain act. It does not make the full and complete act mandatory. The person "authorized" may do a certain act if able or he believes that he should do it.

We, therefore, conclude that the Water Improvement Commission cannot contribute to a municipal or quasi-municipal pollution abatement construction program more than the total federal contribution under P. L. 660, 84th Congress. The federal contribution so specified is the maximum which the state may contribute. The state's contribution, like that of the federal government, is determined and limited by the amount of funds appropriated by the legislature. If the legislature does not appropriate to the Commission sufficient funds for it to contribute an equal share with the federal government, then the Commission may contribute a lesser amount. Such amount would, of course, be determined by the Commission.

GEORGE C. WEST
Deputy Attorney General

March 22, 1963

To: Governor John H. Reed
State House
Augusta, Maine

Dear Governor Reed:

Re: Interpretation of Section 15 I, Chapter 29, of Revised Statutes

You have asked two questions concerning Revised Statutes 1954, Chapter 29, section 15, I, as amended by Public Laws, 1961, Chapter 361, section 4.

"1) Does the present Section 15, I, make it mandatory that the com-

mission disqualify an employee for benefits who has left his employment due to illness or disability not associated with his employment and upon returning to his place of employment immediately upon recovery, finds that his former job has been filled or that work is not available to him?"

The pertinent section reads as follows:

> "Sec. 15. Disqualification for benefits. An individual shall be disqualified for benefits:
>
> "I. Voluntarily leaves work. For the period of unemployment subsequent to his having retired, or having left his regular employment voluntarily without good cause attributable to such employment, or with respect to a female claimant who has voluntarily left work to marry, or to perform the customary duties of a housewife, or to leave the locale to live with her husband, or to a claimant who has voluntarily removed himself from the labor market where presently employed to an area where employment opportunity is less frequent, if so found by the commission, and disqualification shall continue until claimant has earned fifteen times his weekly benefit amount. In no event shall disqualification for voluntarily leaving regular employment be avoided by periods of other employment unless such other employment shall have continued for 4 full weeks."

A 1961 amendment deleted the following sentence from the section in question:

> "A separation shall not be considered to be voluntary without good cause when it was caused by the illness or disability of the claimant and the claimant took all reasonable precautions to protect his employment status by having promptly notified his employer as to the reasons for his absence and by promptly requesting reemployment when he was again able to resume employment;"

It was because of this amendment that the Maine Employment Security Commission changed its interpretation of the section. In an Administrative Letter #UC-388, dated September 11, 1961, Subject: Effect of Amendments to the Law and Regulation on Operations and Procedures, the Commission stated at page 4, referring to Section 15, I:

> "In the light of this amendment, separations due to illness or disability will have to be considered as being voluntary without good cause attributable and the requalifying requirement imposed — unless the illness or disability is unquestionably job connected in which case it could be found to be with good cause attributable and allowed."

We respectfully disagree with this interpretation. Looking at the section as it reads today, the key words are: " . . . or having left his regular employment voluntarily without good cause attributable to such employment, . . . " The present interpretation seems to disregard the meaning of the word "voluntarily." "Voluntarily" refers to a free exercise of the will; something done intentionally without interference of another's influence. Where illness or a disability is the reason for an individual's leaving his work, under circumstances where it can be said, as a matter of fact, he had no choice, it cannot and should not be said that he left his work "voluntarily"

within the meaning of the phrase. Emphasis must be on the word "voluntarily" before consideration of the words "without good cause attributable to such employment."

We do not believe that the amendment of 1961 necessarily changed the meaning of the act. *Buzynski et al. v. County of Knox, et al.* 158 Me. — (1963). It is our opinion, therefore, that the present section 15, subsection I, does not make it mandatory upon the commission to disqualify an employee for benefits who has left his employment due to illness or disability not associated with his employment.

Respectfully yours,

FRANK E. HANCOCK
Attorney General

April 15, 1963

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

Re: Legality of Time Certificates of Deposits or Time Deposits with the Federal Home Loan Bank

You have asked, in your memo of March 29, 1963, regarding the legality of a savings bank making time deposits in other banks.

A savings bank may not make time deposits in other banks.

Revised Statutes 1954, chapter 59, section 19-D, II, provides:

> "Every savings bank, subject to the restrictions and limitations contained in this chapter, shall have the following powers: . . .
>
> "I. To deposit *on call* in banks or banking associations incorporated under the authority of this state, or the laws of the United States, or in any bank of the Federal Reserve System located anywhere in the United States; . . . " (Emphasis supplied).

Historically, we find this provision first appeared in Public Laws 1877, chapter 218, section 13, a revision of the banking laws recommended by a commission authorized by the legislature in 1875. The pertinent wording was:

> "Savings banks may deposit on call in banks or banking associations . . . "

There have been a number of amendments to this particular section including general revisions of the banking laws in 1923 and 1955. In spite of these actions by the legislature it has not changed this particular wording. It must be concluded that the intent of the legislature was to ban time deposits by savings banks, there being a clear distinction between time and call deposits. See *State v. Mitchell*, 51 So. 4, 9 (Miss.) quoting *State v. Caldwell*, 44 N. W. 700 (Iowa).

GEORGE C. WEST
Deputy Attorney General