

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

July 3, 1963

To: David Garceau, Commissioner of Banks and Banking

Re: Municipal Corporation Notes held by Trust Companies — Loans or Securities?

Facts:

A trust company holds notes of a city. The City Council duly authorized their issuance. The notes recite that they are issued to build and equip a public elementary school.

Question:

Should these notes be considered as loans or the purchase of securities?

Answer:

They are to be considered as loans.

Opinion:

It is not necessary to get into a technical discussion of the difference between a loan and the purchase of securities. The matter is settled by the wording of chapter 59, section 112. The second sentence of this section states, in part:

“Loans to municipal corporations located within the state upon their bonds or notes shall not be affected by the provisions hereof;”

The legislature, by indirection, has stated that money advanced by a trust company to a municipal corporation whether in exchange for bonds or notes of the municipality are, in effect, loans.

Additionally, it should be pointed out that Private and Special Laws 1945, Chapter 49, Article IX, Section 8, by which the notes are authorized, provides:

“Money may be *borrowed* within the limits fixed by the constitution and statutes of the state now or hereafter applying to said Old Town by the issue and sale of bonds or notes pledged on the credit of the city,” (Emphasis supplied).

Again the legislature has stated that money obtained through notes is “borrowed,” not a sale of securities. The word “borrowed” certainly implies the “loaning” of money rather than the sale of securities.

Note the difference in the language used by the legislature in authorizing bond issues by the state. Private and Special Laws 1963, chapters 180, 181, 182, 186 and 200.

GEORGE C. WEST

Deputy Attorney General

July 18, 1963

To: Mr. Joseph T. Edgar
Deputy Secretary of State
State House
Augusta, Maine
Dear Mr. Edgar:

Re: Bond Issue for Self-Liquidating Student Housing for the State Teachers' Colleges.