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.

On deposit with the Secretary of State is an act relating to the above subject which shows on its face that on June 22, 1963, it was passed to be enacted by the House and the Senate and was approved by the Governor. It bears the authenticating signatures of the Speaker of the House, the Senate President and the Governor.

The legislative journal indicates that, although the bill was passed in its original form by the House, it was amended in the Senate and was not enacted in its amended form by the House.

In your memorandum of July 11, 1963, you ask:

(1) Does there now exist a valid act providing for a bond issue to provide funds for self-liquidating student housing at the State Teachers' Colleges?

(2) Shall or shall not this department include the above legislation on the ballots to be used in the Special Election of November 5, 1963?

Your questions are answered in the affirmative.

In *Weeks v. Smith*, 81 Me. 538, the court said:

> " . . . our constitution . . . requires both branches of the legislature to keep journals of their proceedings, thereby making them public records to be looked to, when no higher or better source remains from which to establish the validity of a statute.
>
> "But when the original act, duly certified by the presiding officer of each house to have been properly passed, and approved by the governor, showing upon its face no irregularities or violation of constitutional methods, is found deposited in the secretary's office, it is the highest evidence of the legislative will, and must be considered as absolute verity, and cannot be impeached by any irregularity touching its passage shown by the journal of either house."

In *Field v. Clark*, 143 U. S. 649, it was alleged that a section of a bill, as it finally passed, was not in the bill authenticated by the signatures of the presiding officers of the respective houses, and approved by the President. Citing *Weeks v. Smith* with approval, the U. S. Supreme Court held that it was not competent to show from the journals of either house that the act did not pass in the precise form in which it was signed by the presiding officers and approved by the President.

In *Pangborn v. Young*, 32 N. J. Law 29, the question arose as to the relative value, as evidence of the passage of a bill, of the journals of the legislature and the enrolled act authenticated by the signatures of the speakers of the two houses and by the approval of the governor. It was alleged that the bill originated in the house and was amended in the senate, but as presented to and approved by the governor, did not contain the senate amendments. The court held that the authenticated bill was conclusive proof of the enactment and contents of the statute, and could not be contradicted by the legislative journals or in any other mode.

If, then, no invalidating irregularity appears on the face of the bill, there is no question that it is a valid law, enacted in its original, but not

in its amended form. Below the signatures of the Speaker, the Senate President and the Governor, appears a stamp, and the signature of Harvey R. Pease, Clerk. The stamp reads, "House of Representatives, House Receded & Concurred, June 22, 1963." Without resort to the legislative journal, or to testimony of the Clerk or other persons, it cannot be determined at what point in the sequence of events this stamp was placed on the bill.

In *Stuart v. Chapman*, 104 Me. 17, two amendments to the same statute were passed and signed on the same day. It was urged that the legislative journals showed that one bill was passed and signed before the other, and was thus amended by the latter. The court held that the journals could not be used to prove this fact, and held that, nothing appearing to the contrary, statutes approved on the same day would be presumed to have been approved contemporaneously.

By the same token, the journal, or other evidence outside the bill itself, cannot be resorted to in order to find out precisely when or with what intent the stamp was placed on the bill. In and of itself, the stamp does not indicate any irregularity such as to invalidate the bill.

It is the opinion of the Attorney General, therefore, that the bill designated P. & S., 1963, chapter 182, on deposit in your office, is a valid act and should be placed on the ballots to be used in the special election of November 5, 1963.

Very truly yours,

FRANK E. HANCOCK
Attorney General

July 19, 1963

To: Earl R. Hayes, Executive Secretary, Maine State Retirement System

Re: Right of Former Employee to Retirement — Military Leave

Facts:

An employee of the Maine State Library entered military service in February, 1941. He remained in service until December 31, 1950, when he retired with a permanent physical disability. He was under medical care from January 1951 to April 1954.

On advice of medical authorities, he went to work in May 1954 for Tele-dale Distributing Company, St. Petersburg, Florida. Employment continued through April 1957. Left employment due to heart attack.

Since 1957 he has worked a few weeks each winter in T. V. antenna work to keep busy.

He has been advised not to do any work that requires physical exertion or mental strain. He is not allowed to live in a cold climate.

He is under constant medical supervision at both Walter Reed Army Hospital and State Hospital McDill Air Force Base, Tampa, Florida.

Question:

Is the former state employee eligible to return to state employment thereby validating his credits toward retirement after this extended period of time?