

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

REASON:

Title 5, section 741, defines "public improvements" as, "... the construction, major alteration or repair of buildings or public works now owned or leased or hereafter constructed, acquired or leased by the State of Maine or any department, officer, board, commission or agency thereof, or constructed, acquired or leased, in whole or in part with state funds."

The facts relate to the building of "works of improvements, including flood control dams." Certainly such construction comes within the meaning of "public works" as quoted above. The legislature appropriates funds to the State Soil Conservation Committee. In turn, some of these funds are allocated to the districts. See Title 12, M.R.S.A., section 201. Such funds allocated to the districts are, of course, state funds.

12 M.R.S.A., Sec. 3, 2, defines a "district" or "soil conservation district" as "an agency of the state." A soil conservation district, being an agency of the state, any public improvements which it constructs must be subject to the provisions of Title 5, M.R.S.A., sections 1741 to 1776.

GEORGE C. WEST
Deputy Attorney General

June 29, 1965
Treasury

Eben L. Elwell, Treasurer

Investment of Excess Moneys and Retirement System Funds

Reference is made to your letter of June 23, 1965, asking about the legality of investing certain state funds.

FACTS:

On July 1, 1965, the State will sell bonds duly authorized for use in water improvement facilities. Some part of the proceeds of this sale cannot be used until after July 1, 1966. See P & S 1965, ch. 129. Thus, there will be excess money in the State Treasury and the Treasurer is desirous of investing some of the proceeds of the sale of bonds in notes insured by the Farmers Home Administration.

QUESTION:

Are notes insured by the Farmers Home Administration and assigned to said agency a proper investment for excess moneys in the State Treasury?

ANSWER:

Yes.

OPINION:

5 M.R.S.A. 135 states in part:

"When there are excess moneys in the State Treasury which are not needed to

meet current obligations he may, with the concurrence of the State Controller or the Commissioner of Finance and Administration and with the consent of the Governor and Council, invest such amounts in bonds, notes, certificates of indebtedness or other obligations of the United States of America which mature not more than 24 months from the date of investment."

We know that some portion of the proceeds of the bond sale constitutes "excess moneys . . . not needed to meet current obligations" as some of the money is not available for distribution until July 1, 1966.

The question to be answered is whether notes issued by the Farmers Home Administration are either "bonds, notes, certificates of indebtedness or other obligations of the United States of America which mature not more than 24 months from the date of investment."

The Farmers Home Administration is a part of the United States Department of Agriculture. It operates an insured farm loan program whereby farmers may borrow money from private lenders which loans are insured by the Farmers Home Administration. Any mortgage given as security runs to the Government. The lender holds only the insured note. Payments on principal and interest are fully guaranteed by the Government. Certain types of loans will be payable over periods up to 40 years and others up to 33 years. From time to time lenders under this program assign notes to the Farmers Home Administrations. These are the notes now available to the State to purchase.

Such notes, if legal for investment under 5 M.R.S.A. § 135, must be (1) "obligations of the United States of America" and (2) "mature not more than 24 months from the date of investment."

There are several opinions of the Attorney General of the United States which affirm that notes insured by authority granted under an act of Congress are obligations of the United States of America. Railroad Loan Guarantees Under the Transportation Act of 1958, Vol. 41, op. No. 68 -

"It is enough to create an obligation of the United States if an agency or officer is validly authorized to incur such an obligation on its behalf and validly exercises that power."

See also opinions as follows: Vol. 41 op. No. 63; Vol. 41 op. No. 24; Vol. 42, op. No. 1; Vol. 41 op. No. 76.

We are satisfied that such notes are "other obligations of the United States."

Next, we must consider if the obligation "matures not more than 24 months from the date of investment." The actual notes have varying maturity dates over periods of several years. However, at the time of purchase the government enters into a repurchase agreement with the State. Under this agreement the government will buy back the notes on July 1, 1966, with an option whereby the State may continue holding all or some part of the notes for another year.

Thus, it seems that so far as the State is concerned the "obligation of the United States of America" to the State of Maine will "mature not more than 24 months from the date of investment." The date of investment being scheduled as July 7, 1965.

It is, therefore, our conclusion that the State Treasurer may lawfully invest "excess moneys . . . not needed to meet current obligations" in these notes.

GEORGE C. WEST
Deputy Attorney General