

MAINE STATE LEGISLATURE

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March 18, 1966

George F. Mahoney, Commissioner

Insurance

Jerome S. Matus, Assistant

Attorney General

Investment of Associated Hospital Service Funds in Guaranty Capital
of a New Domestic Mutual Insurance Company

FACTS:

The Associated Hospital Service of Maine desires to invest a portion of its reserve funds in the guaranty capital of a new domestic mutual insurance company. The purposes of the new domestic mutual insurance company will be limited to the writing of accident and health insurance solely for subscribers of nonprofit hospital organizations and medical service organizations regulated by 24 M.R.S.A., Chapter 19. It is assumed that the Board of Directors of the Associated Hospital Service of Maine consider the investment of the Associated Hospital Service funds in the guaranty capital of the new domestic mutual insurance company to be a sound prudent investment.

QUESTION:

Would such an investment be in violation of 24 M.R.S.A., § 2308?

ANSWER:

No, as qualified by this opinion.

OPINION:

24 M.R.S.A., § 2308, restricts the investment of nonprofit hospital or medical service organizations' funds in the same manner as savings banks in this State. The section reads as follows:

"Any corporation subject to this chapter shall be restricted in its investments in the same manner as are savings banks in this State."

A thorough examination of 9 M.R.S.A., Chapter 51 as amended, (the Chapter of the Maine Revised Statutes Annotated regulating investments of savings banks) reveals no provision specifically relating to investments in guaranty funds of domestic mutual insurance companies. Without a specific provision in which this form of an investment is classified, the directors of Associated

Hospital Service of Maine must look to 9 M.R.S.A., § 610 as amended by the 1965 Public Laws of Maine, Chapter 334, § 12, if an investment in the guaranty funds of a domestic mutual insurance company is to be permitted. The section reads as follows:

"Savings banks may hereafter invest; In such other securities as the trustees of a bank may consider to be sound prudent investments.

"Not more than 10% of the deposits of a bank shall be invested in securities within the coverage of this section."

The Directors of the Associated Hospital Service of Maine hold similar positions of responsibility to Trustees of a savings bank and under this statute are the persons who determine whether or not an investment is a sound prudent investment. The facts assume that the contemplated guaranty fund investment is a sound prudent investment in the judgment of the Directors of the Associated Hospital Service of Maine. This opinion shall, in no way, be construed as a judgment by the Attorney General's Department, the Insurance Department, or any other department of the State of Maine, on whether or not sound prudence would be exercised by such an investment.

The 10% limit on investments set forth in 9 M.R.S.A., § 610, as amended, refers to deposits of savings banks. Accounting terms in balance sheets of savings banks and nonprofit hospital and medical corporations cannot be superimposed upon each other because of the differing functions and financial structures of savings banks and nonprofit hospital and medical corporations. Reserves of a nonprofit hospital and medical corporation are available, inter alia, to meet loss claims of subscribers. Deposits of a savings bank are available, inter alia, to meet withdrawals of depositors, i.e., claims of depositors. We analogize reserves of a nonprofit hospital and medical corporation to deposits of a savings bank recognizing that there are differences in the functions of deposits and reserves.

In determining whether or not the 10% limit of 9 M.R.S.A. § 610, as amended, has been complied with, the Insurance Commissioner should satisfy himself that the contemplated investment does not exceed 10% of the reserves of a nonprofit hospital and medical corporation.

For the reasons set forth herein, it is our opinion that the contemplated investment does not violate 24 M.R.S.A. § 2308, if the contemplated investment does not exceed 10% of the reserve funds of the Associated Hospital Service of Maine.