STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

ANSWER:

Yes.

OPINION:

In view of the answer to question No. 1 above, it automatically follows that the Governor and Council may schedule pardon hearings when they wish to hold them. The only limitation is that set forth in 15 M.R.S.A. § 2161, which provides that "written notice thereof shall be given to the Attorney General and the County Attorney for the county where the case was tried at least 4 weeks before the time of the hearing thereon, and 4 weeks' notice in some newspaper printed and published in said county."

As long as the Governor and Council give at least 4 weeks' notice to the Attorney General and the County Attorney and the notice is published at least 4 weeks prior to the scheduled date of the hearing, it is not necessary that the pardon be scheduled for the next meeting of the Governor and Council, or the next meeting of the Governor and Council at which other pardons have been scheduled.

GEORGE C. WEST
Deputy Attorney General

June 15, 1967
Banks and Banking

Irl E. Withee, Deputy Bank Commissioner

Three-year loan limitation of industrial banks.

FACTS:

You have requested by memorandum, rulings on the three-year loan limitation of industrial banks prescribed by 9 M.R.S.A. § 2381, subsection 2, as amended by P. L. 1965, chapter 454.

QUESTIONS:

1. Will a renewal, either in full or in part of a 3-year loan, be construed to be in violation of the section?
2. If a payment or payments on a 3-year loan should be in arrears, will an extension of such payment or payments beyond the maturity of the loan be construed to be in violation of the section?

ANSWERS:

Question No. 1: Yes.
Question No. 2: Yes.

OPINION:

9 M.R.S.A. § 2381, subsection 2, as amended by P. L. 1965, chapter 454 reads as follows:

"§2381. Unlawful acts

"No industrial bank shall:

"...

"2. Loan limitations; 3-year limit. Make any loan for a longer period than 3 years from the date thereof, except in the case of loans that are eligible for insurance under the National Housing Act and for the insurance of which under that Act seasonable application is made pursuant to the National Housing Act, Title I;"

Thus it is clear that the Maine Legislature has placed a three-year limitation on the period of time assets of an industrial bank can be placed at risk in the form of a loan to the borrower. (Except in the cases of loans that are eligible for insurance under the National Housing Act for the insurance of which seasonable application is made under that Act.)

A renewal either in full or in part of a three-year loan by an industrial bank beyond a three-year period from the original making of the loan would effectively place at risk assets of the industrial bank beyond a three-year period. The extension of a payment or payments on a three-year loan beyond the maturity date of the loan would have the same effect. Thus, in our opinion, a renewal or extension of a loan by an industrial bank beyond a three-year period would abrogate the provision of 9 M.R.S.A. 2381, subsection 2, as amended by P. L. 1965, chapter 454 and be unlawful.

JEROME S. MATUS
Assistant Attorney General

August 17, 1967
Banks and Banking

Irl E. Withee, Deputy Commissioner

Addendum to Opinion of June 15, 1967.

A request has been made for a clarification of my opinion dated June 15, 1967 relating to the 3-year loan limitation of industrial banks. My opinion is unchanged. However, in respect to my answer to Question No. 1, it is necessary to establish what is meant by the word "renewal". The word "renewal" when applied to a note means the continuance of the old obligation, including the obligation of all parties liable thereon. Sproul v. Beskin, 166 N.Y.S. 606, 608, 179 App. Div. 275. If a note is renewed by an industrial bank beyond the 3-year limitation, the loan is in violation of 9 M.R.S.A. § 2381 (2). However, if a note is marked paid and returned to the borrower and an obligation in the form of a new note is entered into between the same borrower and the same industrial bank, we have a novation at law, i.e., an entirely new obligation. See *Seaboard Finance Company v. Schaefer, et ux,* [69 D.&.C. 147 (1949) Pa.]. In *Beneficial Finance Company (Maine) v. John C. Fusco,* 160 Me. 273 (1964), there was a contention of a violation of the small loan statute prohibiting compounding of interest. The Maine Supreme Court upheld the opposite contention of the finance company that when the parties executed a note for the purpose of the defendant borrowing additional money and paying off the original note, the unpaid accrued interest became transferred into principal in the new note. Although the *Beneficial Finance Company* case, supra, related to compounding of interest under our small loan law, I am of the opinion that the same rationale would be applied to the question of whether or not there is a violation of the 3-year loan limitation by industrial banks established in 9 M.R.S.A. §