

MAINE STATE LEGISLATURE

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Banks and Banking
Attorney General

Title 9, § 600 and § 612. Purchase of Industrial Convertible Bonds by Savings Banks in Maine, and the Subsequent Conversion of said Convertible Bonds into Common Stock.

FACTS:

By memo you have requested answers to the following questions:

QUESTION #1:

May a convertible bond be certified as legal under 9 M.R.S.A. § 600?

ANSWER #1:

Yes.

QUESTION #2:

If a convertible bond may be certified as legal under 9 M.R.S.A. § 600, may it be converted to common stock under 9 M.R.S.A. § 612?

ANSWER #2:

Yes.

OPINION #1:

9 M.R.S.A. § 600 provides in pertinent parts:

"Savings banks may hereafter invest: In the bonds or other fixed interest-bearing obligations of any corporation * * * ."

The remaining language of 9 M.R.S.A. § 600 places limitations on the nature and extent of investments falling within the general category of bonds and other fixed interest-bearing obligations. It is clear a convertible bond must meet all of the limitations set forth in 9 M.R.S.A. § 600 to be a proper investment for savings banks; however, there is no specific limiting language in 9 M.R.S.A. § 600 which would disqualify a convertible bond from falling within

the purview of permissible investments under that section. Thus, we are of the opinion that a convertible bond may be a proper investment under 9 M.R.S.A. §600.

OPINION #2:

9 M.R.S.A. § 612 provides in pertinent part:

"Savings banks, loan and building associations and trust companies organized under this Title may acquire and hold securities not authorized by law but which have been acquired * * * by the exercise of rights applicable to securities held by said banks, associations and trust companies * * * ."

We assume for purposes of this opinion that the investment in common stock has not been otherwise authorized by law under provisions of 9 M.R.S.A. § 602 (Maine corporate stocks), 9 M.R.S.A. § 603 (bank stocks), Public Laws of 1965, c. 335 § 10, repealing and replacing 9 M.R.S.A. § 607 (insurance company stocks), 9 M.R.S.A. § 609 (securities approved by Bank Commissioner), 9 M.R.S.A. § 610 (securities deemed held by bank trustees - the so-called prudent man provision).

An investment in a convertible bond with rights to convert into common stock may be authorized by law under provisions of 9 M.R.S.A. § 600. See Opinion #1. Such a convertible bond gives the holder certain rights to convert to common stock under certain conditions. If the conditions are present and the holder decides to exercise his rights, upon the exercising of the rights, the convertible bond loses its character as a bond and becomes common stock. If the resulting common stock was not otherwise authorized by law as a proper investment, it is a proper investment under the provisions of 9 M.R.S.A. § 612.

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JSM/eh