STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years

1967 through 1972

established by the student ward for which the district may pay tuition in the first instance, and then seek reimbursement from the State. Furthermore, mere attendance at any school, whether public or private, does not per se establish residence within the geographic area in which said school is located.

PHILLIP M. KILMISTER
Assistant Attorney General

June 7, 1968
Treasury

Michael A. Napolitano, State Treasurer

Allotments, availability of Funds

SYLLABUS:

Actual funds need not be available for expenditure prior to the approval of departmental allotments.

FACTS:

In your memorandum of April 24, 1968 submitted to this office you state the following factual resume:

> "For budgeting, allotting and accounting purposes the state fiscal year is divided into four quarters. A department is required to submit to the State Budget Officer a work program projecting its needs on a quarterly basis. After review by the State Budget Officer and upon approval by the Governor and Council, the department is notified of the amounts of money allotted to its work program by quarters for the ensuing year."

QUESTION:

Do the various Appropriation Acts or Revised Statutes of Maine require that actual funds must be available before allotments can be approved?

ANSWER:

No.

OPINION:

The entire state budget system is based upon estimated receipts and expenditures and the balancing of one against the other for definite periods of time. State income derivative from taxation and other major income sources can be estimated with a certain degree of accuracy, however the exact time when revenue due the state will be received is not predictable.

The approval of state departmental allotments is based upon estimated income accruable to the state and not the amount of funds in the state treasury actually available for expenditure at any one time. To base approval of anticipated state departmental expenses upon the amount of funds actually held in the state treasury on a given date would lead to an archaic and unworkable method of state financing.

An expenditure and an appropriation are not synonymous.

> "An 'expenditure' is the expending, a laying out of money, disbursement, and is not the same as an 'appropriation', the setting apart or assignment of funds to a particular person or usage." *Grant v. Gates,* 97 Vt. 434, 124 A. 76; *Suppiger v. Eniking,* 60 Idaho 292, 91 P. 2d 362.

In most appropriation acts including P & S 1967, c. 154, the following language occurs:

> "Whenever it appears to the Commissioner of Finance and Administration *that the anticipated income of the State will not be sufficient to meet the expenditures authorized by the Legislature,* he shall so report to the Governor and Council and they may temporarily curtail allotments equitably so that expenditures will not exceed the *anticipated income.*

The above-quoted language is clearly indicative of the fact that the approval of allotment, or expenditure requests, is based upon anticipated income and not actual income received. It is clearly permissible, and indeed an economic fact of life, that estimated expenditures of state government may be approved in any amount (subject only to the maximum limits set by the legislature), irrespective of the amount of actual funds in the state treasury at any given time.

PHILLIP M. KILMISTER
Assistant Attorney General

June 10, 1968
Maine State Retirement System

E. L. Walter, Executive Secretary

Prudent Man Investment Rule Required.

SYLLABUS:

The Board of Trustees of the Maine State Retirement System is without authority to waive the statutory provision which requires that all investments by its bank fiduciary be in accordance with the prudent man investment rule. Further, the Board is without authority to allow its bank fiduciary to commingle trust funds of the Maine State Retirement System with other trust funds in the fiduciary's possession.

FACTS:

The First National Bank of Boston, the bank fiduciary for the Maine State Retirement System, has advised the Retirement System that starting July 1, 1968, it is the Bank's intention to establish "Selected Pooled Funds". The reason is to take advantage of investments which are frequently of such a size and such a nature that it is difficult to acquire them in the normal type of retirement fund. The selected funds will be growth oriented and will place particular emphasis on investments which have a projected high rate of overall annual increment which would tend to make them more volatile than other less specialized situations.

It would consequently be necessary to allow the First National Bank of Boston to invest without being bound by any rule of investment law, including, without restriction, investments that would yield a high rate or income or no income at all if the Maine State