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Joseph E. Brennan ATTORNEY GENERAL



RICHARD S. COHEN JOHN M. R. PATERSON DONALD G. ALEXANDER DEPUTY ATTORNEYS GENERAL

STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL Augusta, Maine 04333

September 27, 1977

To:

Leighton Cooney, State Treasurer

From:

Joseph E. Brennan, Attorney General

Re:

Sale of Certificates of Deposit

You have requested an opinion from me on the question of whether there are any State laws or regulations prohibiting the Treasurer from selling one or more of the certificates of deposit held by the State. As I understand the facts, the Treasurer from time to time invests State monies in bank certificates of deposit. Those certificates of deposit are themselves negotiable and trade like other securities. It is your desire to sell such certificates, where financially appropriate, rather than holding the same to their maturity date since under certain circumstances the sale of the certificate may be financially beneficial to the State.

The power of the State Treasurer is set forth in Title 5 of the Revised Statutes. Section 135 of Title 5 authorizes the Treasurer to engage in certain financial transactions involving State funds, including purchase, and presumably sale, of United States Government obligations and "prime commercial paper." Deposit of funds in State banks is also authorized.

Section 138 of Title 5 empowers the State Treasurer to "invest all permanent funds held in trust by the State in such securities as are legal investments for savings banks." Legal investments for sayings banks are defined in § 554 of Title 9-B to include "certificates of deposit of financial institutions authorized to do business within this State."

It clearly appears, therefore, that the Treasurer may invest State funds in bank certificates of deposit. These certificates may be sold by the Treasurer, just as any other authorized investment may be sold and reinvested at the discretion of the Treasurer. See, e.g., Title 9-B M.R.S.A. Ch. 55 which enumerates the permissible investments for banks and therefore for the Treasurer. The authority of the Treasurer to purchase any of those authorized securities logically presupposes the authority to sell when necessary.

We have examined the Maine Securities Act to determine whether the certificates of deposit must be registered under that Act or whether the dealer registration requirements are applicable to the Treasurer. Section 873(3) of Title 32 exempts securities issued by banks from the registration provisions of the Act. Section 851 of Title 32 requires only that dealers in securities be registered. The definition of "dealer" in § 751, ¶ 1, applies only to the person acting as an agent or salesperson of securities, which definition would not include the Treasurer in this instance.

Finally, we have examined the relevant federal laws and regulations to determine whether the sale of these certificates of deposit as proposed would be subject to any federal regulation. It is our opinion that a certificate of deposit is not a security within the meaning of the Securities and Exchange Act of 1934, 15 U.S.C. § 78c(a) (10) and is not subject to federal registration requirements. Bellah v. First National Bank of Hereford, Tex., 495 F.2d 1109, 1114 (5th Cir., 1974).

Based upon the above analysis, it appears that there are neither State nor federal regulations which would prohibit the State Treasurer from reselling, at no loss to the State, one or more of the certificates of deposit held by the State.

Very truly yours,

OSEPH E. BRENNAN Attorney General

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