

MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

Senate Document

No. 149

In Senate, February 8, 1929.

Tabled by Senator Spear of Cumberland pending consideration and 1000 copies ordered printed.

ROYDEN V. BROWN, Secretary.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-NINE

COMMUNICATION from Governor Gardiner Transmitting
Report of State Auditor on State Trust Funds.

February, 4, 1929.

Hon. Wm. Tudor Gardiner,
Governor of Maine,
State House,
Augusta, Maine.

Dear Sir:

At the first session of the legislature after I became state auditor (1923), I called the attention of the governor, Honorable Percival P. Baxter, to the condition of the trust funds of the state and recommended that legislation be enacted in order that these trust funds be placed at their true standing

and that they be invested in state securities or placed in time deposits at interest in the banks of the state.

At the suggestion of Governor Baxter I drafted an act which if passed would require all such trust funds, whether held by the state or any municipality thereof, to be so invested or deposited. The state and many of its cities and towns had fallen into the unbusiness-like method of expending their trust funds and then raising by general taxation the annual interest on same to meet the conditions of the trust.

The proposed act requiring trust funds to be restored was opposed at the committee hearing. The mayor of Portland at that time stated to the committee that his city would be required to immediately raise through taxation more than \$250,000.00 to restore trust funds of that city. Other opponents also appeared. The bill was therefore unfavorably reported out of committee and failed of a passage. Governor Baxter suggested that I rewrite the act, making it applicable to all future trust funds coming into the hands of the state or of municipalities, and this was done. This second bill was favorably reported and passed and became chapter 222, public laws of 1923.

In accordance with the provisions of the act just referred to this office has caused all credits accruing to the Permanent School Fund, the Passamaquoddy Indian Fund, the Teachers' Retirement Fund, and the Western Maine Sanatorium Fund to be deposited at interest in various depositories in the state. The Penobscot Indian Fund has not been added to for many

years, so that fund is not affected. The Lands Reserved Fund was specially excepted from the provisions of the law, and the balance is represented by cash in the treasury to be invested by the Farm Lands loan commissioners, as provided by chapter 303, public laws of 1917, as amended. As the Public Administrators' Fund and the Receivers' Fund are small and are in any event only conditional trust funds as they may be called for at any time, or may eventually escheat to the state, I have not construed the law as applying to them.

In the case of all of these funds the credits accruing to them have not been kept separately, but have become mingled with the general fund, with the result that these funds, until 1923, were all book liabilities only. The state, however, has faithfully observed its obligations by paying interest on each one at the rate fixed by law or established by custom. In fact, on the two Indian funds the state since the office of state auditor was created in 1907, has averaged to pay on the Penobscot Indian Fund through specific enactments by the legislature 27.4 per cent on its fund and on the Passamaquoddy Indian Fund 26.8 per cent.

The combined total of these funds on December 31, 1928, was \$1,529,824.88, of which \$592,159.79 is invested in securities or deposited in banks in separate accounts. There has therefore been invested and deposited in separate accounts an amount equal to approximately 38 per cent of these funds under the act of restoration of 1923 and chapter 303, public laws of 1917.

There follows a brief history of these various trust funds relating the manner in which they came into being and the manner in which additions have been made to and withdrawals deducted from them.

LANDS RESERVED FOR PUBLIC USES

Under the law of colonial Massachusetts each town was required to support a "Gospell Minister" and the colony made provision for his support, as follows: In each township, when surveyed, there was set aside in accordance with law four reserved lots of 320 acres each, the first to be known as the lot for the first settled minister; the second to be known as the lot for the use of the ministry; the third for the support of common schools, while a fourth lot was held back for the future disposition of the general court. The latter lot in most cases was soon disposed of but the three lots for the promotion of religion and education could not be alienated for other purposes. This is the reason why the public lots in Washington and Hancock counties in the townships never settled are now 960 acres, as these surveys were made prior to the adoption of the Federal Constitution in 1787. After the separation of church and state the legislature of Maine provided, about 1824, that townships thereafter surveyed should contain 1,000 acres as a public lot to be reserved for educational purposes in that township. The law further provided that such public or reserved lands could not be sold but might be leased, giving the preference for leasing same to the purchaser or purchasers of the land in that township. It was further provided that the

lessee had a right to cut the timber and grass on such reserved and public lands only until such time as the township should be organized as a plantation, at which time the control of the one thousand acres automatically reverted to the control of the state land agent, who was thereafter charged with the duty of permitting the cutting of timber on such land, the proceeds to be paid over to the treasurer of state as a fund, the interest on which annually should be paid to the officers of such plantation for the support of schools therein.

The consideration for the original lease was also required to be paid into the treasury of the State of Maine, and it is the proceeds from such transactions that today compose the fund in the treasury known as the unorganized townships fund.

As plantations were organized in the early history of the state the interest on the fund to the credit of such plantations, and now known as the organized townships fund, was paid over, and has been ever since so paid over to the plantation officers for the support of schools in such plantation, the rate of interest being six per cent.

The question has many times been discussed by officials of the state government as to the liability of the state to the unorganized townships as to whether the state should compute interest on the amount of money paid into the treasury for leases, at the rate of six per cent, or whether the interest should be compounded. This matter has never been determined. In 1913 the state auditor called attention to the lands reserved fund and suggested the importance of having the records traced

through in order that the true standing of this fund might be ascertained. As a result the legislature passed chapter 297 of the resolves of 1913, which reads as follows:

“Resolved, that the state treasurer and state auditor are hereby authorized to ascertain the true standing of any and all of the accounts in the treasury and that they be and hereby are authorized to adjust said accounts upon the books of the treasury and auditing departments according to the true standing thereof.

They are hereby required to make such report to the next legislature as will show in detail all changes made in such accounts to properly adjust them.”

Acting under this resolve representatives of the department of the state auditor and treasurer made an exhaustive study of the various laws and the old records in the office of the treasurer of state relative to this fund.

The principal of the fund was established at \$380,194.94, which was \$16,545.69 less than the amount carried at that time on the treasurer's books. This new principal was reported to the seventy-seventh legislature and chapter 255 of the resolves of 1915 authorized the state treasurer and the state auditor to make the necessary entries to place at their true standing the sums then to the credit and also the sums then charged against certain plantations and townships of the state.

The legislature took no action whatever in relation to the matter of the state's liability in the matter of the interest on the unorganized townships fund. In 1916 Governor Curtis,

having refused to allow a number of the appropriations made by the legislature the previous year to be used to build up various state institutions and having been criticized for such refusal by his political opponents, replied to these criticisms by stating that the fund known as the Lands Reserved for Public Uses was not in the treasury, but by the terms of chapter 8, section 19, of the revised statutes was required to remain in the treasury until called for by towns as they were incorporated by the legislature, ordered this fund set up in cash in the treasury.

In the administration of Governor Milliken it was proposed that this money so restored should be invested in farm loans and this suggestion met with a ready response from Mr. Wardwell, the state auditor, and from Governor Milliken, with the result that chapter 303 of the public laws of 1917 was passed authorizing this fund to be so loaned or to be invested in United States bonds or the bonds of the State of Maine.

There are now \$154,979.49 invested in farm loans and \$360,800.00 invested in state highway bonds and in deposits. There is also an investment of \$20,000 in State of Maine war loan bonds, issue of 1917. There remained December 31, 1920, \$188,223.97 represented by free cash in the treasury, not segregated from other funds and available for investment by the farm lands loan commissioners.

PERMANENT SCHOOL FUND

In 1828 the legislature passed an act, chapter 403, public laws 1828, by which the land agent, with the advice of the

governor and council, was authorized to sell at public auction or private sale any number of the townships of land, not exceeding twenty, averaging six miles square

“upon such terms of credit as in their judgment will best promote the objects of this act, and whenever any credit shall be given to the purchaser he shall secure the state by the joint note of himself with two or more sufficient sureties to the acceptance of said agent is required to pay into the treasury of the state the sums he may receive from the sale or sales of said land, and to deliver over to the treasurer of state all the notes he may obtain upon the sale or sales of said land, immediately after he shall have received them.”

“Sect. 2. That the treasurer of state be directed to keep a separate account of all monies he may receive from the sales of said land and from the notes in payment therefor, and the same shall constitute a permanent fund to be reserved for the benefit of primary schools. And said fund shall be put out on interest, in such manner as a future legislature shall determine, and the interest annually distributed among the several towns and plantations in the state, according to the number of scholars therein, commencing at such time as by law shall be hereafter provided.

“Sect. 3. That whenever this state shall receive any sum or sums of money on account of the claim of Massachusetts or the United States, for services rendered by the militia of that commonwealth during the late war, the excess over and above

what the state may then owe shall constitute a fund to be appropriated and distributed in the manner provided by the second section of this act.”

(Approved Feb. 23, 1828)

On January 1, 1841, the Permanent School fund stood at \$2,974.66. In that year the foregoing provisions, somewhat amended, were embodied in the revision of the statutes of 1841 (chapter 11):

“Sect. 50. The treasurer of state shall keep a separate account of all moneys he may have received, or may hereafter receive, from the sales of lands by the land agent, or from the notes taken therefor, pursuant to the provisions of the first section of an act passed February 23rd in the year 1828, entitled ‘An Act providing for the promotion of education;’ and the same shall constitute a permanent fund, to be reserved for the benefit of town or district schools. The fund shall be put out on interest in such manner as the legislature shall, from time to time, determine; and the income thereof, annually distributed amongst the towns in the state, according to the number of children therein, of the ages specified in section seven of this chapter commencing at a time to be specified by this chapter.

“Sect. 51. All the sums which may hereafter be received by the state, for the tax on the several banks, under the provisions of the sixteenth section of chapter twenty-seven, shall continue to be appropriated to the support of town or district schools.”

Sales of the public lands greatly increased between 1841 and 1848, being in several of those years in excess of \$20,000.00, so that the Permanent School fund on April 30, 1848, stood at \$106,854.12. In 1847 the legislature passed chapter 7, of the public laws of that year, providing for the payment of teachers' institutes, such expense to be deducted from the Permanent School fund, and for the same purpose there was deducted in 1849, \$2,205.22.

In 1850 there was another deduction from the fund of \$5,031.83, but it has been impossible to determine from either the books of the state treasurer or the land agent to what purpose this amount was diverted.

The public lands were being sold so rapidly by 1850 that it was evidently concluded that the proceeds should be used to extinguish the public debt, so that a resolve of that year (chapter 339) provided:

“That all the lands owned by the State of Maine, either in severalty or in common with the Commonwealth of Massachusetts (other than those located or which may hereafter be located for settlement) not heretofore otherwise appropriated, are hereby set apart for the creation of a fund to pay the public debt of this state; and the proceeds of the sale thereof, except so much as may be required for the expense of surveying and controlling them, and the location, construction and maintenance of roads on said lands, shall be hereafter paid into the treasury and applied to that same purpose alone, until said debt shall be extinguished; and whenever there shall be funds

in the treasury arising from this source not wanted for the payment of the public debt maturing within the year, the treasurer is hereby authorized to anticipate the payment of any of the public debt maturing during the next succeeding year; provided, that nothing in this resolve shall be so construed as to authorize the sale of more land than is now allowed by law."

By 1857, however, the legislature passed a resolve (chapter 72) providing: "That twenty per cent of all money hereafter accruing from the sale of the public lands shall be paid over to the treasurer of state, and that said proceeds be and are hereby appropriated as a permanent school fund for the benefit of common schools, the interest of which shall be paid over annually for their use, in the same manner as the interest on the school fund is now paid."

In the revision of the statutes of 1857 the provisions of law relative to the Permanent School fund were as follows, (chapter 11):

"Sect. 73. The treasurer of state shall keep a separate account of all moneys received from the sales of lands appropriated for the support of schools in this state or from the notes taken therefor, and of any other moneys appropriated for the same purpose; and such sum shall constitute a permanent school fund, which may be put at interest as the legislature directs. A sum equal to six per cent of the amount of such fund, and also all money received by the state from the tax on banks, shall be annually appropriated to the support of common schools, and distributed among the several towns.

according to the number of children therein between four and twenty-one years of age.”

From this time forward various credits were made to the fund, being noticeably large between 1861 and 1868, in which latter year some two million acres of land in northern Maine were sold to the European & North American railroad. In this period the fund was increased by \$106,351.64, so that the fund on December 31, 1868, stood at \$261,112.00.

On December 31, 1881, the fund stood at \$442,757.91, and at this time credits to the fund from the sale of public lands ceased, as the last of the public lands were sold about that date. For the period January 1, 1882, to December 31, 1904, there appears to have been no credits to the fund. In 1903 lapses from the school mill fund which had accrued between 1872 and 1903, inclusive, were credited to the fund under the provisions of section 127, chapter 15, of the revised statutes of 1903, and since that date the balances remaining in the school fund after apportionment to cities and towns and other deductions made by law have been credited to the Permanent School fund.

The revision of the statute of 1871 makes no change in the above wording.

The revision of 1883 is in the same language except the words "in this state" are omitted as being unnecessary.

In 1872 the one mill tax upon all the property of the state was added. In that year was also added the provision now embodied in the statute (chapter 43, P. L. 1872):

“All of the school mill fund not distributed or expended dur-

ing the financial year shall at its close be added to the permanent school fund.”

Chapter 228, P. L. 1903, made one-half of the bank tax available for the fund, instead of the entire amount, as before.

Chapter 124, P. L. 1907, made the mill tax for the common school fund one and a half mills.

Chapter 177, P. L. 1909, made the tax for the support of the common schools one and a half mills, and was additional to the act of 1907, or three mills in all.

Chapter 173, P. L. 1921, provided that the tax be three and a third mills on the valuation.

The present amount of the Permanent School fund, as shown on the books of the treasurer and auditor December 31, 1928, was \$563,399.09.

Under the provisions of chapter 222, P. L. 1923, the state treasurer has set aside all amounts lapsed from the state school fund on each December 31st, since July 1, 1923 and has deposited same in two of the banks of the state and holds savings deposit books for same. This part of the fund so set aside amounts to \$41,057.58.

INDIAN FUNDS

The Penobscot Indians, by treaty, ceded in 1830 to the State of Maine two townships of land where Millinocket now stands and also conveyed to the state certain islands in the Penobscot river. The state did not profit by the transaction, as these lands were immediately sold at a nominal price. The money

derived from this sale was paid into the treasury, with the provision that interest on the fund so established should be paid over annually for the benefit of the tribe. The obligation has been faithfully observed; in fact, the state, realizing the needs of these its wards, has for many years paid back to the Indians in money and in goods an amount far in excess of the amount stipulated in the treaty.

The Penobscot Indian fund on December 31, 1928, stood at \$88,092.44, the annual interest at 6% therefore being \$5,285.54. This latter amount is appropriated each legislative session in the appropriation act in pursuance to a resolve passed at such session.

The fund has not benefitted by the passage of chapter 222, public laws of 1923, as no credits have accrued to the fund for many years. The true standing of the fund was ascertained in 1908 by Charles P. Hatch, the first state auditor, and as a result of his investigation \$15,763.96 was added to the fund on account of an error in making certain credits to the fund in the year 1849.

This fund was not segregated in separate depositories, with the result that it is today non-existent, except as a bookkeeping transaction. From the standpoint of good business methods and as an example to many cities and towns of the state, which find themselves in much the same situation, it is very important that this fund be placed in a separate depository in cash, or else be invested in sound securities, in keeping with the spirit of the act of 1923, referred to.

PASSAMAQUODDY INDIAN FUND

A treaty with this tribe of Indians differed from the one drawn with the other to the extent that their lands could not be sold, but were required to be used and occupied by the tribe. The forest commissioner permits the right to cut timber and wood on the Indian township adjoining Princeton and the proceeds are paid into the treasury and interest on the fund so created is annually paid over to the tribe, in accordance with an item in the annual appropriation bill, placed there by authority of a resolve passed at each session.

In January, 1927, the church on the Indian reservation at Pleasant Point burned. The legislature, then in session, authorized the withdrawal of \$6,000.00 from that part of the fund to the credit of this tribe that had accrued under the act of restoration of 1923. This has been done with the result that on December 31, 1928, the Passamaquoddy Indian fund stood at \$129,085.74. There had accumulated in cash deposits since 1923 to the credit of this fund \$20,039.35. The deduction of the \$6,000.00 by legislative authority therefore reduced this amount to \$14,039.35, and now increased to \$15,322.72. The amount so withdrawn was used in the construction of a new church. This fund, with the exception of the \$15,322.72, is non-existent, except as a bookkeeping entry on the liability side of the state's books.

MADAWASKA TERRITORY SCHOOL FUND

When President Jackson refused to re-charter the Bank of the United States about 1833, the funds of the bank due to

the Federal government were distributed to the various states. In Maine the legislature, in turn, distributed them to the various towns. As the northern boundary of Maine had not then been established the towns on the St. John river did not share in this distribution and for many years made claim for their share. In order to settle the matter the legislature in 1861 provided that a fund be established to be known as the Madawaska Territory School fund, amounting to \$5,000.00. The state pays interest on this fund to the various towns and plantations in that region at the rate of 6%. The fund is represented on the books of the state as a liability only and should be restored. I cannot find that any money was ever paid over to establish such a fund and I believe that the credit of the state only was involved in this matter.

ACADEMY AND OTHER MINOR FUNDS

There are a number of additional small funds totalling \$20,244.15 on which the state pays interest and which are not represented by securities or deposits.

Notwithstanding the fact that the legislature of 1877 took so lenient a view of expended trust funds that it submitted a resolution to the people of Maine proposing that such expended trust funds should not be considered in determining the five per cent debt limit of any city or town, and notwithstanding the fact that the people adopted this as an amendment to the Constitution of Maine amendment XXII, I am convinced that the depletion of its trust funds by the state or any municipality thereof is not good business. I therefore recommend that the

various funds of the state to which I have called attention be invested at a more rapid rate.

We now pay six per cent interest to the organized plantations on their reserved lands funds but our investments in farm loans and state bonds made out of this fund earn only five per cent and four per cent, respectively. The part of the lands reserved fund known as the unorganized townships fund by the provisions of the law earn only four per cent, which interest is annually credited to the equalization fund. These varying rates of interest should not exist, in my opinion. The difference between what the investments in these funds earn and the amount the state pays is included in the tax levy. Manifestly the state should not be obligated to pay over more interest than these funds earn.

There appears below a tabulation showing the book amounts of these various funds as of December 31, 1928, the amount invested and the liability of the state above the amount so invested:

	Total	Amount	Bal. of State
	Amount of Fund	Invested	Liability
Lands Reserved for			
Public Uses	\$724,003.46		\$188,223.97
Investments			
Highway Loan			
Bonds		\$276,000.00	
War Loan Bonds..		20,000.00	
First Mortgage			

Farm Loans		154,979.49	
Bank deposit of interest and matured bonds			84,800.00
			<hr/>
			\$535,779.49
Permanent School Fund	\$563,399.09	\$41,057.58	\$522,341.51
		Banks	
Passamaquoddy Tribe of Indians Fund . . .	\$129,085.74	\$15,322.72	\$113,763.02
		Bank	
Penobscot Tribe of Indians Fund	\$88,092.44		\$88,092.44
Foxcroft Academy Fund 6%	\$1,000.00		\$1,000.00
Hebron Academy Fund 6%	1,000.00		1,000.00
Houlton Academy Fund 6%	2,000.00		2,000.00
Jordan Forestry Fund	1,125.00		1,125.00
Madawaska Territory School Fund 6% . . .	5,000.00		5,000.00
School District No. 2, Madison 5%	1,000.00		1,000.00
Augusta State Hospital—Gilman Legacy			

5%	1,000.00		1,000.00
Augusta State Hospital — Williams Legacy 4%	1,000.00		1,000.00
State School for Boys, Sanford Legacy 6%	700.00		700.00
Deaf, Dumb and Blind, Sanford Legacy 6%	600.00		600.00
State School for Girls Funds 5%	10,819.15		10,819.15
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Total	\$1,529,824.88	\$592,159.79	\$937,665.09

Very truly yours,

ELBERT D. HAYFORD,

State Auditor.