

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1233
HAWKINS

LEGISLATIVE RESEARCH COMMITTEE

State House, Augusta, October 6, 1942.

Re: EMERGENCY MUNICIPAL FINANCE COMMISSION.

1233
HAWKINS

LEGISLATIVE RESEARCH COMMITTEE

State House, Augusta, October 6, 1942.

Re: EMERGENCY MUNICIPAL FINANCE COMMISSION.

State House, Augusta, October 6, 1942.

MR. DONALD W. WEBBER: This matter for presentation this morning comes to us by way of complaint, I think I might say, on the part of Mr. Donald Smith and the investment house in Waterville which he represents against a State department, the Emergency Municipal Finance Commission which is comprised ex officio of the State Tax Assessor which is its chairman, the State Auditor, who is its present secretary, and the State Treasurer, who, as you all know, have the control of towns and cities like the City of Eastport which have fallen into financial straits.

Now it is been the policy of this committee to listen impartially to any complaints or grievances by citizens of Maine or any other place against State Departments and attempt to get at the truth of the matter. I want to preface the remarks this morning by stating from the stories as I have had them from both sides it appears that difficulties regarding a possible compromise settlement of the affairs of the City of Eastport go back of the incumbency of the present chairman, Mr. Hill and into the days when Mr. Holley, the then State Tax Assessor, was chairman of the board. This has been the subject of some thought by the committee, and in the interests of time we have come to the conclusion that inasmuch as Mr. Holley is no longer State Tax Assessor or chairman of this board and is not in the employ of the State of Maine that it perhaps would be a time-wasting procedure to go back into

the ancient history of the difficulties which arose while he was here. We felt that if we did that it would be necessary in all fairness to allow Mr. Holley to be present and we might have some prolonged debate as to the merits of what he did or didn't do at that time which would serve no very useful purpose. I think it is fair to say that rightly or wrongly when Mr. Smith's firm was first interested in trying to work something out for the City of Eastport Mr. Holley adopted the fixed and rigid policy of not letting out any information as to the exact financial status of the City of Eastport, and I think everybody in this room knows that is true and would not be contested by Mr. Holley if he were here. I do not think anybody was able to get any information until the new set-up of the board took place.

Now I will ask you, Mr. Smith, if that seems to you a fair statement and whether we will accomplish the full results as far as you are concerned if we begin with the incumbency of Mr. Hill and the new set-up of the board which would be as of about what date?

MR. HILL: May 7, 1941.

MR. SMITH: That is perfectly all right.

MR. WEBBER: You understand my reasons, don't you, Mr. Smith? There is no thought of trying to suppress anything in the past or cover up anybody, but I think that whatever agreements you may feel were reached or whatever were

supposed to be actually consummated took place after Mr. Hill came into office and not before. I think we all know you were not satisfied with what took place prior to Mr. Hill coming into office and I think we can go along without it and that we have plenty of ground to cover if we begin with May 1941 and come forward.

MR. DONALD SMITH: Perfectly all right.

MR. WEBBER: Now for the knowledge of the committee I might say we have here this morning the full commission, Mr. Hill and Mr. Smith and Mr. Hayes, the deputy Attorney General assigned to this Commission, Mr. Burkett, Mr. Vose who is a practicing attorney in Eastport and an interested citizen there, and Mr. Beckett, who is County Commissioner and a resident of the County, Judge Powers, whom we are very glad to have with us this morning and who is acting Master on Eastport, and Mr. Smith and his partner, Mr. Stanley, who represent the firm.

Now I think we might try to see how much progress we can make without my interjecting too many questions by giving Mr. Donald O. Smith an opportunity to state his position.

You reside in Waterville, and you are in the investment business?

MR. SMITH: That is right.

MR. WEBBER: And, as a part of your business, your firm has been interested from time to time in refinancing municipalities in the State of Maine?

MR. SMITH: That is right.

MR. WEBBER: And even prior to 1941 you had been interested in the affairs of the City of Eastport and the possible working of something out?

MR. SMITH: Yes.

MR. WEBBER: Now have you your facts and circumstances so arranged that you can follow some chronological pattern of events as you feel they transpired?

MR. SMITH: Of course I did not know exactly what was expected down here, but I have tried to jot down the facts. It is a pretty hard proposition when you have worked on a thing about seven years to get it in shape so you can concisely present it to a committee such as this one.

MR. WEBBER: We want to do this as expeditiously as possible, but nevertheless we have all day if necessary and nothing else in particular scheduled for today, and I think we might at least see how well we get along. It perhaps would help you if I didn't direct your thought too much, and I think we can begin by letting you start with May, 1941 and tell us the story as you feel it took place.

MR. DONALD SMITH: I have got just a few statements here in order about the way the thing started.

As far as Eastport goes, that is not our main complaint. We started this crusade against the Emergency Municipal Finance

after the act was put in force and we tried to do something with the Commission at that time and were unsuccessful. We felt the law was illegal in the first place and it was not adequate to cover the situation. It might possibly have taken care of certain of our cities and towns which the State took over but it certainly could not do anything, has not any power whatsoever to help communities before they get into trouble, and our aim and our crusade here has been to get new legislation -- not particularly Eastport: Eastport was the shining example because it is the biggest place in Maine under State control, and it was apparently one of the worst situations. We were asked to start and try to refinance Eastport before the bill was passed. That is how we happened to carry the thing through with Eastport, but our main aim in coming down here is not to get Eastport refinanced but to point out to the Committee here and try to start work for new legislation in this next Legislature which will eventually aid communities in Maine, not only the communities which go under state control but those communities which are not under state control now but which need help just as badly as the ones which are under. As I say, we start here with the fact the City of Eastport defaulted way back in 1934 and from 1934 to the present time it has been about eight years in which we have had one of the cities of the State of Maine defaulted and interest and credits for the most of the time frozen, and the thing is not any nearer solution now than it

was back in 1934. We have done a good deal of work in Maine on municipal bonds; we set ourselves up as experts, rightly or wrongly, in municipal finance, and we feel that the thing is not a bit nearer solution now than it was back in 1934.

MR. WEBBER: Well now, I think what you have suggested about the whole problem of sick towns is one of the reasons why we are very glad to have this whole thing come up, because that might very well be the subject of future legislation and that is very definitely one of the provinces of this committee; but can we begin first by trying to analyze the Eastport situation, and I think we will eventually lead ourselves into a discussion of the general problem of helping these towns.

MR. SMITH: You would not be particularly interested at this time about the plan which we proposed to Eastport before the Emergency Municipal Finance Board took control? That plan is approximately the same plan which we propose now and I believe is the only plan that can be put through.

MR. WEBBER: Then I think we want to hear it.

MR. SMITH: I started in here: The Merrill Trust Company in the first place asked us to see if we couldn't do something. They put out the last issue of Eastport bonds they had and these bonds defaulted, and after these bonds defaulted they asked us to see if we could do something for Eastport. We went down. We told the council at Eastport -- there were seven on that council and it was a pretty tough

council to work with -- we finally proposed a plan of refinancing, and that plan is very briefly as follows: It was an extension of all their bonds. They had overdue interest and overdue bonds. Some of their bonds had already matured, I think about \$5000 at that time. We proposed an extension of bonds which matured before 1936, the payment in cash of the 1936 and 1937 coupons, the refunding of all overdue coupons with notes payable during the next six years, and all extended bonds to be callable any time at par. In other words, we were trying to set up a program where Eastport, if the situation should improve, could call their bonds in at any time and put out a lower rate bond. We provided for a sinking fund to be established which would be sufficient to take care of all obligations with the exception of the outstanding bonds during the next six years. In other words, we were setting all the bond maturities ahead for a six-year period and giving them six years to establish a sinking fund to take care of their overdue bills, bills payable, which included state taxes and county taxes.

Under this plan the city would have had a fixed charge of less than \$3000 per year, I think, which figures just about \$2800. That would be their total interest charge until 1947.

MR. WEBBER: Let me interrupt you. The debt limit of the City of Eastport is approximately \$50,000?

MR. SMITH: It is at this time. At that time it was higher. We had a vote -- I believe the vote was four to three in the council against acceptance of this plan. Mr. Emery, who was Mayor, controlled enough votes to stop the plan from going through although some of the committee wanted the thing to go through.

Soon after that the act was passed and the Emergency Municipal Commission took control. We immediately got in touch with the Commission and at that time we were told that they wouldn't do anything, all they were interested in was taking care of payrolls. So we gave the thing up, but after that we tried to get Barrows as Governor of the State interested in the proposition, but I believe the act is pretty definite, it gives practically absolute control to the Commission and I do not know that the Governor could interfere in the thing if he wanted to, but it did seem to me it is important enough to the State of Maine so that he would. At any rate, we didn't get anywhere.

In 1940 we wrote to Nathaniel Tompkins, who was Chairman of the Legislative Committee. We never did receive a reply. I don't know what happened to that.

Before 1940 we had a conference with Governor-elect Sewall. Mr. Hill was present at that conference. I think at that time that Mr. Sewall, hearing just one side of the picture, agreed something should be done and as soon as he was able to do it he would, but realizing he was a busy

man we just let the thing go and we never did get very far and we never heard from him until some other things happened which brought him indirectly into it.

Then we come up to 1942, and that is where we actually began with this Commission. At that time Mr. Smith and Mr. Burkett talked with us. We had an appointment at the Elmwood Hotel to discuss the City of Eastport situation, and we were asked at that meeting if we felt the City of Eastport situation could be worked out, and we told them very definitely we believed the City of Eastport could be refinanced and certainly should be refinanced as soon as it was possible. That was about all that happened at that time. Then, following that, we had a meeting with the Finance Commission and that was our first meeting. We were asked the same question.

MR. WEBBER: That was in February?

MR. SMITH: This was about in February -- I may not be exactly right on all these dates because we didn't keep very good track of dates, but in February, 1942, we were at a meeting of the Emergency Finance Commission by invitation and were asked to present a plan. We told them in a general way we believed the situation could be worked out, and all of the members of the Commission -- Mr. Stanley was with me at both of these meetings and he can verify this, because there may be some disagreement -- they agreed they would like to have the plan which we proposed in a general way put in a definite form and presented to them

just as soon as possible, and we told them at that time that it might take at least a couple of weeks to do it but we would get ~~bx~~ it back to them just as soon as we could. We were asked what we needed, and at that time we told them the first thing we needed was the cooperation of the commissioners, we needed the financial statement of Eastport with an audit showing the way the taxes had been collected and the way the city had been operated for the last few years, which we knew was available but which we had never been able to get, and we looked that over hastily in the office and told them at that time again that we believed we could work out a plan and we would get a definite plan to them very quickly. I don't know just how long a time elapsed but I don't believe over two weeks, and we came down there and we presented as basic plans three plans.

MR. WEBBER: That was February 17, 1942?

MR. SMITH: Yes. We have copies of these plans here, and some of the plans call for the state and county to take bonds for their taxes and others do not.

The plan which the Commission approved of and which we recommended was a plan that would get the state and the county out and all other creditors, but there would have to be a compromise.

MR. WEBBER: Is this the proper time to state in detail what that plan was?

MR. SMITH: Well, I have the plan. If you want to break in here anytime it is perfectly all right because there may be questions here now that will be pretty important.

In the first place, in looking over the audit we found the following liabilities of Eastport which were outstanding. Part of them had been frozen since December, I think December 27th or something like that, 1937, when the Commission took over Eastport. Outstanding bonds, \$61,000; State taxes \$41,325.21; county taxes \$27,554.72; accounts payable \$47,342.25. Then we have taken an equalization fund here of \$594.60. That equalization fund was a pretty hard thing for us to figure out. We didn't know just what it was, and even after we found out what it was it was pretty hard to say whether it should go in as a liability and be refunded or whether it should not. It looked as if it was sort of a plaything down there and they used it to build up their cash position as much as anything else.

The accrued interest outstanding at the time of the audit -- and that is what these figures were based on, the audit of December 31, 1941 -- was \$37,737.51. I don't know just how that interest was figured, whether it was figured on the coupon rate of the bond and six per cent for the state and county taxes. I don't know what it should be. I think the law calls for six per cent on all overdue bills, overdue interest on bonds that are defaulted.

At any rate, it is immaterial whether these figures are exact or not. We have estimate about \$7700 in interest that would bring this thing up to the present time. At the time we brought that plan to the committee the interest would not have been quite that much, but you see the interest has accrued down there at the rate of about \$7700 a year in Eastport -- it may be over that but I have just figured the bare interest. That figure we got by taking six per cent on the frozen state and county taxes and the bonds. Now you might figure interest on accounts payable and so forth but we have not done anything like that. Any way, we arrive at a total figure here of \$223,000 and some odd for the City of Eastport. Now the City of Eastport has a debt limit at the present time of \$50,000. Their valuation is just slightly over a million dollars. I might say at the time we presented our original plan the valuation of Eastport was \$1,358,000. In other words, since this has been under state control the valuation in Eastport has been cut approximately twenty-five per cent. That is one way that the State is paying indirectly for the City of Eastport.

From the audit and from talking with the Commissioners we arrived at a cash figure. We do not know yet whether the figure is right or is not right, and of course that figure would vary at different times of the year, but the audit I believe shows \$106,000 in cash as of December 31, 1941, but since that time cemetery funds have been

replaced to the extent of \$11,000. Then the school equalization fund has to be kept in cash, and as near as we could make out we figured there is somewhere around \$88,000 there. At that meeting the Commissioners told us, I believe, there was \$75,000 in cash. That was the figure that we had to work with and we had to use when we presented our plan to them.

CHAIRMAN DOW: What do you mean by "cemetery funds replaced?"

MR. SMITH: Just that. The cemetery funds have been replaced down there with government bonds, cemetery funds which we understand were dissipated and used for the City of Eastport, and those funds have been replaced.

MR. WEBBER: By the Commission?

MR. SMITH: By the Commission. In other words, you have got a situation there of a city with \$223,000 worth of obligations. Now we do not know whether these obligations are all legal or not all legal, that is for the court to decide, but at any rate that is the situation; and the total assets available, including the \$50,000 which they might realize from bonds if they could get anybody to buy them would be \$138,000. In other words, there is \$85,000 which the City of Eastport is over and which has got to be compromised in some way or thrown out by the courts. Now if the matter is thrown out by the courts you may run into a legal tangle that will carry this thing on a good many more years.

It is our belief as municipal bond men that in order

to conserve the credit of not only Eastport -- we don't care particularly about Eastport: we are looking out for our other communities in Maine. Eastport is a tough situation; they are probably getting just what they deserve down there, nevertheless they are a creature of the State of Maine and if you let them go it is still going to hurt the credit of the State of Maine and the longer they go the more it is going to hurt the credit of the State of Maine.

Now if this situation that exists in the State of Maine was made public you would find a considerable difference in the credit of our Maine obligations right now. At the present time these things work as a sort of a technical default. People will say: "Well, in Eastport there has been a tough crowd down there and they have got in trouble." They will work out of it sometime, but if municipal bond buyers generally knew there were thirteen communities in the State of Maine now under State control, that some of these communities have been under State control for over six years and nothing had happened, that these credits had been frozen, that the State and county had been collecting their current taxes but the bondholders who deserve current interest just as much as the state and the county deserve current interest were not allowed to do anything, they were thrown out, they were in a class by themselves, it would not set

well with the municipal bond buyers and you would find that the credit of all of your communities in the State of Maine would be injured severely.

The municipal business is a peculiar business; it concentrates in a few buyers; you haven't got buyers spread all over the country -- you can go into Waterville and find one or two municipal bond buyers -- so that information can pass very fast from one to the other. Municipal bond houses are very few in comparison to total bond houses. If you elaborate on that situation and say there are probably thirty or forty other communities in the State of Maine which are considerably over their debt limit and nobody is doing anything about it, I think you will find the credit of the State of Maine would be injured beyond repair and you would find it would cost the State of Maine a good many thousand dollars to build that back if it could ever be done. That is the reason that we have fought this thing. As far as the personalities go, if we have trouble with Holley or somebody else that doesn't amount to much, we are just small men and it is a pretty important thing -- apparently nobody else believes it~~h~~ but us, but we are still going to fight the thing through just as far as we can, and that is the thing we have come down here for. We looked at it as sort of a last resort because we have tried everything else. If it doesn't work, we feel we have done all we could do,

and we still feel we are right on it. But you have got a situation there. We have talked with lawyers, talked with bankers and everybody else, and talked with our bondholders and tried to find out what could be done, and we arrived at something here that could actually be put across but we still were not successful in getting the thing across; but it is our firm belief that this thing should be put through, that these communities should be cleaned up just as fast as possible before the end of this year before the Legislature convenes, then you won't have the dirt to bring before the Legislature, you won't have the unfavorable publicity and you can go ahead and concentrate on the towns which are in trouble and concentrate on their legislation so that you can get some sort of a state control over these communities that are over their debt limit and nobody cares. The Mayor is going to keep his tax rate right down to 57 mills or whatever it is: he don't give a hang what happens to the community; he will let the debt ~~xxxx~~ go along just the same but he is going to keep his tax rate down because that is how he stays in office. If the state doesn't do something about this situation we are going to pay for it in the end.

MR. WEBBER: Now, Mr. Smith, you have stated quite clearly what the financial situation was in February as near as you could estimate it, then you have developed

the general remarks, but I want to remind you that you haven't stated what you propose to do to take care of the situation.

MR. SMITH: Well, I feel strongly about this thing, so I am apt to get a little bit excited.

We start back here at the \$223,000 worth of obligations in Eastport and \$138,000 available. The plan that we recommended was a general plan -- I have it here, but this may have changed a little bit. I think we have added the \$7700 in interest there. At any rate here is what we proposed for the City of Eastport: To eliminate all outstanding interest on bonds, state and county taxes and accounts payable if any; offer the bondholders 80 per cent of the principal amount of their claim; offer the State 80 per cent of the principal amount of its claim; offer the county the same; offer the miscellaneous accounts possibly 25 to 50 per cent; then issue \$50,000 City of Eastport bonds.

Now I might say at this time that after this plan had been proposed we talked with some bondholders. After our first meeting we were given authority by the Commission to go down to Eastport, get all the information we could from Ela, who is Commissioner, I guess you call it, in Eastport, and talk with some of our bondholders and find out if this thing could be worked out. We also at the same time talked with some of the fellows who controlled outstanding accounts payable.

MR. WEBBER: Let me get this straight: This authority you got from the Commission you got at your first conversation, February 4th?

MR. SMITH: That is right.

Naturally, of course, we were not going down to the City of Eastport or anywhere else and work on this thing any further unless we had the backing of the Commission. We supposed at that time that we had the backing of the Commission; we had every reason to believe it, because each man on the Commission was asked.

MR. STANLEY: That was at the second meeting each man was asked.

MR. SMITH: We were not able to get any information out of Ela, but we were told then we would get full cooperation from Mr. Ela to go down there and see what we could do and come back with this plan, which we did.

Our fee for the work that we were to do and the liability that we were to assume -- because we actually agreed to buy the \$50,000 worth of City of Eastport Bonds. Now you gentlemen may not feel that is very much of a liability, but I think if you talk with very many bond houses over the country you would think we stuck our necks out a ~~xxxx~~ ^{****} of a long ways when we said to this Commission we would buy \$50,000 worth of City of Eastport bonds. We did. We realized exactly what we were doing. At that time we talked with the Commission and they agreed they would

take \$11,000 worth of bonds for the cemetery trust fund: they would sell those government bonds; that the least the City of Eastport could do was take some of their own bonds in that cemetery fund. That would cut our liability down to \$39,000. We were willing to go along with them but we were going to get paid for it if we accepted this liability; because I had talked with bond houses and there wasn't any chance in the world, apparently, of our being unable to unload a single City of Eastport bond. This was before the Commission had gone down to Boston and talked with some of the Boston dealers -- and since that has happened the possibility of selling Eastport bonds has gone down the scale considerably further: that is the mere publicity would make this thing harder to work out. We tried to impress that on the Commission at the time. We said, "Let us get at this and get it cleaned up just as soon as we can," because if we were going to handle the bonds we would tell the people that bought those bonds the exact story. That is the only way we have been able to stay in the bond business. We would outline our story and then say, "This situation is cleaned up, the bondholders voluntarily agreed to take eighty cents on a dollar for the principal amount of their bonds," -- and that, by the way, figures somewhere around 55 per cent on the total amount due them. They eliminate all the interest.

The reason this 80 per cent on State and County tax has come up was the fact that we talked with bondholders and they stated very emphatically they would not take eighty per cent ^{if} ~~for~~ the State and County was going to take one hundred per cent; it would not be done; they would fight the thing through and if they lost all their money they would lose all their money. So we came back to the Commission at our second meeting, and that was one of the requirements, that the state and county would take their proportionate cut, and at that meeting Mr. Burkett was present; the present Attorney General was called in and he talked for half an hour or so, and he finally said he believed the thing could be put through, if the Commission wanted to put it through they could legally do it. Mr. Paine was called in. The Commission would recommend to the Governor the acceptance of 80 per cent of these state taxes -- the State Auditor and Mr. Paine -- whoever is in his position -- so that apparently was all agreed on at the meeting.

MR. WEBBER: Your fee for putting this through and assuming the liability on the bonds would be how much?

MR. SMITH: \$10,000.

MR. WEBBER: And that was so stated?

MR. SMITH: That was so stated.

MR. STANLEY: That should be included in the plan costs really.

MR. SMITH: It was never discussed at the meeting. At the first meeting we were told to bring in our plan and bring in our fee. We did it. We never heard any word of criticism from the Commission about our fee.

MR. WEBBER: But at the February 17th meeting when the plan was presented the fee was presented and discussed?

MR. SMITH: Was presented but not discussed.

MR. WEBBER: Now what action did the Commission take on the plan February 17th?

MR. SMITH: Well, there is apparently considerable disagreement over the action which the Commission took.

Mr. Stanley and I went out of that meeting with the firm belief that we were given authority by the Commission to carry out the plan of the City of Eastport, the refinancing plan, that the only hitch or the only question was the question of the percentage which would be offered to the bondholders and the others. That was a question which was brought up very emphatically by Mr. Paine, who said he would not make any recommendation whatsoever to accept 80 per cent until he had studied the statements of Eastport and was convinced in his mind that the City of Eastport was using up the entire amount of cash and credit which they had. That was in perfect accord with our stand. We are not interested in wiping out the City of Eastport debt in any way, shape or manner. We do not believe it should be wiped out: we believe in the best interests of

the State it should be brought down to a point where they can start out once more with a debt within their legal debt limit.

MR. WEBBER: Was the Commission polled on the plan in your presence?

MR. SMITH: Each member of that Commission was asked by Mr. Hill if they wanted to go along on this thing and they answered in the affirmative.

MR. WEBBER: Was it put in the form of a vote?

MR. SMITH: They were just informally asked. I don't know what a vote of the Commission amounts to. Apparently we were very much misled by the Commission -- or I might put it another way -- apparently we entirely misunderstood what the Commission had in its mind when they called us down there even.

MR. WEBBER: Now this plan was predicated among other things on the legal ability of the county to accept a compromise of taxes.

MR. SMITH: That question was discussed very much right there at that meeting. Mr. Cowan was called in. We had a previous experience in settling with a county and it had been worked out. There are a lot of these things you can say are illegal but which can be done. The Emergency Municipal Finance Act itself has been found illegal, but it is still being carried on.

MR. WEBBER: Now this was also predicated on the accounts

payable being willing to accept less than the bondholders got?

MR. SMITH: That is right. The plan that we presented called for a payment to the accounts payable for this reason: we felt those accounts payable might be thrown out; if this thing was carried through to the court and a master's report comes down they might be thrown out; but for the best interests of Eastport and in order to carry this thing through and get the people behind this thing, your accounts payable with the people who were doing business with the City of Eastport right along -- they had suffered through this thing for six long years, and in doing business with the city of course they took a profit, practically all of them -- and we tried to use commonsense on the thing ourselves, and we talked with some of the people that had some of these accounts and asked them what they thought, if they would accept a percentage. We said, "We don't know what the percentage will be, maybe ten, maybe twenty-five or fifty." They said, "Well, ten per cent would be pretty hard to put through, twenty-five per cent might be put through, fifty per cent I think there would be no question but what we would recommend it." So we put down our twenty-five to fifty per cent, I believe it was, in our plan in order to allow some leeway so we could get practically one hundred per cent of accounts payable in there. I would like to make this plain right now -- we actually got -- I guess that was after the meeting ---

MR. WEBBER: I am going to come to that.

MR. WEBBER: To bring the picture up to date as of February 17th, am I right that two suits had been brought against the City of Eastport by creditors at that time?

MR. SMITH: I believe that is right. A suit was brought by the Waterville Realty Corporation, which is a corporation which we control -- it was a dummy suit, brought with apparently the entire approval of the Commission, to bring this thing out in the open, to find whether we had got a legal right to do what we were doing or not.

MR. WEBBER: That particular suit brought by the Waterville Realty Corporation went to the Law Court and the Law Court determined that that provision of the law which seemed to prevent a creditor from obtaining a judgment against a city or town under the Commission was in abrogation of the right of contract and unconstitutional. Is that right?

MR. SMITH: That is correct.

MR. WEBBER: So that as to that feature of the law it has now been definitely determined by the Law Court that part of the law is unconstitutional?

MR. SMITH: That is right.

MR. WEBBER: And that judgment is now pending?

MR. SMITH: I believe that is right.

MR. WEBBER: But held up by the appeal in equity under which Judge Powers has been appointed Master for the determination of what are legal claims against the City of Eastport?

MR. SMITH: That is right.

MR. WEBBER: So there is a temporary injunction in force against the putting in effect of that judgment?

JUDGE POWERS: Pardon me, I would like to correct an error. I do not think it ever went to judgment; I think it is still pending.

MR. WEBBER: The original suit of the Waterville Realty Company?

JUDGE POWERS: I understand so. No judgment was proved before me. There was a bond proved.

MR. WEBBER: I thought it had actually gone to judgment and then judgment was held up.

JUDGE POWERS: I assume Mr. Eaton would have proved judgment if he received one. I haven't personal knowledge of it, but I will say the bond upon which that suit was brought was proved as one of the claims, not as a judgment but as a bond.

MR. WEBBER: Now, further, Mr. Smith, there was a suit brought by the Eastport Water Company. Perhaps you know, Judge Powers, whether that suit of the Eastport Water Company went to judgment.

MR. POWERS: It did.

MR. WEBBER: And the attorney for the plaintiff in the Eastport Water Company suit is Mr. Merrill, of Skowhegan, and this settlement as you propose would be predicated upon his willingness or the willingness of his client to

accept less than eighty per cent?

MR. SMITH: Well, that was the discussion at the meeting. We realized that some of these claims we might not be able to get one hundred per cent to agree on this scheme. At that time I recall Mr. Hayes was very emphatic that the proper procedure would be on the small claims to pay them one hundred per cent anyway and get them out of the way, that is claims under \$10 or \$25, the small claims should be paid in full. In other words, if we had the thing to work out we would go ahead and try to work the thing out. You understand in order to put this thing through and for us ever to sell a City of Eastport bond this thing had to come voluntarily from the creditors: the Commission could not go to them and say, "We are going to give you eighty per cent on these bonds. If you don't want it we will just hold it here." You had to get them to voluntarily take a percentage. That is where we came into the picture: we are an intermediary there.

MR. WEBBER: What I am trying to establish is this: whether or not when you went out of your February 17th meeting a definite plan as proposed by you had been accepted by the Commission or whether there were still numerous difficulties which had come up ~~as the~~ part of the meeting which still remained to be settled before anything definite was determined on.

MR. SMITH: As I pointed out before, the only thing when we went out of that meeting, the only question which was in our minds or in the minds of the Commission as far as we knew was what was the percentage going to be. We took the liability of \$50,000 of bonds. We said, "We are going to take this liability. Will you let us know just as soon as possible so we can get at that thing?" We told the Commission at the first meeting, we said, "We will hold our organization ready to go to work on this thing because we want to clean it up just as fast as possible. In order to do this job right it has got to be done very quickly, cut out publicity and go ahead and contact your men and do the work." The only question -- I can state this and Mr. Stanley can verify it -- the only question when we left that meeting to be settled was whether it was to be eighty per cent or seventy-five per cent or what the percentage would be. Mr. Paine was to look the thing over and apparently he and Mr. Hayes were to have the final say on it. We could not determine the exact percentage, but even then a few thousand dollars one way or another would not make too much difference in this thing. Bringing out your point, we knew about the Eastport matter at this meeting, we knew that Merrill had been contacted and he said he wouldn't do anything on the thing. That was known right there. But a man can take a stand on a thing and still when it is pointed out that here is something that is

going to be for the best interests of the state you can compromise that, and we might have a compromise on that situation by getting the right parties to go to the Eastport Water Company. You might say of the Eastport Water situation here was a big claim that might have thrown the whole thing to the winds, but I say absolutely not because in our plan we were trying to allow for ten thousand dollars which would be a **Fund** where money could be used to pay some claims one hundred per cent. It wouldn't make any particular difference whether some of these claims were paid one hundred per cent. In the final analysis the percentage might have come down to twenty-five per cent.

MR. WEBBER: I think we have got the picture pretty well as of February 17th.

CHAIRMAN DOW: I would like to know the amount of that Eastport Water Company claim.

MR. SMITH: \$13,000, I think. I can give you the exact figure.

MR. PAYSON: Mr. Smith, your intention was to avoid a legal determination of what of these bills were good and what not good against the City of Eastport in order to protect the general credit situation?

MR. SMITH: That is right.

MR. HILDRETH: I wish you would repeat your statement of what

the issue was and what was decided when it went to the Law Court. There was some provision of this Emergency Finance act that was unconstitutional?

MR. WEBBER: My understand -- and Mr. Powers will correct me if I am wrong -- there is, perhaps you will recall, a feature of the Emergency Municipal Finance law which says that no creditor of one of these towns or cities can get a judgment -- I am not sure whether it says he cannot bring suit, but he cannot get a judgment against one of these towns and cities while it is under the Commission. That went to the Law Court, and the Law Court decided that feature of the law was in derogation of the right of contract and therefore unconstitutional.

CHAIRMAN DOW: I would like to interrupt here to ask if anybody has got any questions.

MR. WEBBER: Then I suggest we go along chronologically as to what you did after that.

MR. SMITH: After we returned from the meeting we did what we said we would do: we held up as much as we could on the thing. We had already contacted bondholders. We have been acting for certain bondholders through the whole process. We had to talk with some of our bondholders on the thing, but there wasn't much we could do apparently until we got this decision about the exact percentage which we were going to ask the creditors to accept.

I would just like to make this point clear: when we went

out of that meeting we had a liability for \$50,000 of bonds which we had agreed to buy. We were ready to believe that we would hear from that Commission within a very short time: I don't mean within a few weeks, I mean within a few days. The thing had been carried along then for a long time. Well, we waited until this day and we never did hear from that Commission. We waited until -- my dates on this thing may not be exactly right, but we waited until I believe it was some time pretty near the middle of April. Our meeting was February 17th. I would just like to emphasize this. The middle of February we had this meeting. We went out of this meeting ready to strike on the City of Eastport plan and expecting to hear from the Commission within two or three days, and we held up, sitting around the office waiting for word from that Commission until about the middle of April. Now that is quite a long time. As I say, we did not hear a word from the Commission. Finally the next step was Belmont Smith called me up one Sunday from Bangor. Ben Ela was there. He said he had some ideas on Eastport and would I meet him in Augusta to discuss the Eastport situation.

MR. BELMONT SMITH: You mean Ela had the ideas?

MR. DONALD SMITH: That is right. I said, "Sure." I came down to Augusta Sunday night. We talked for a couple of hours anyway, and Mr. Ela, who is still Commissioner of the

City of Eastport suggested that possibly we were trying to do too much at once, that the reason we had not heard from the Commission was we were trying to put through too much at one time, that he believed the thing to do was to split our proposition. He said, "Why don't you contact the bondholders and see if you can't get an option on these bonds and go to that Commission? You know they have got \$100,000 or somewhere around there on hand. Go to them with a definite offer of those bonds."

We argued back and forth, and I says, "What we are anxious to do is get this program through and get Eastport within its debt limit." That would be one step only, and as far as going any further we couldn't do it legally, we couldn't put out a bond issue working just that way. We still had to wash out the rest of the debt before we could put out a bond issue. Well, we talked and talked and that was as far as we really got there. I went back home the next morning and I talked the thing over with Stanley and we said, "Maybe that is the trouble. Let's see what can be done. We will contact these bondholders. If what they want is a definite proposition on bonds we will give it to them. We will get some action out of them some way."

In order to do anything -- we had already contacted every one of these bondholders verbally.

MR. WEBBER: That you were doing in the early part ---

MR. SMITH: In the first part of our meeting we contacted them.

MR. HILDRETH: How many bondholders in number.

MR. SMITH: There is not very many. Fifteen. So we started in there -- that must have been the Sunday before April 13th or whatever date that would be, because we immediately started in and called some of our holders and told them what had gone on there, that we had not heard anything definite from the Commission and it looked to us as if this other plan had been suggested -- I think I talked with Otto Nelson -- the Merrill Trust Company does not own any bonds now but he still knows the whole background of the situation so I talked with him and he suggested the thing to do was to get out a regular letter to the bondholders the same as we had done on other things and get a written option on their bonds. And after we thought the thing over we agreed that was the only thing to do, to get something down on paper. We had talked with them and talked with them and had not got anywhere. If we once got the bondholders altogether that would be one class of creditors which is still one of the most important classes and we would really have accomplished something.

Before I sent the letter I called Belmont Smith, and the reason I called Belmont is because although we are not any relation to each other although we are both Smiths, but

we have done a lot of business with the State of Maine during past years and he was the man I knew the best on the Commission. I asked him what he thought of the thing. He said, "That is all right if it can be done without too much publicity." That was, I believe, your statement. So we got out a letter to the bondholders asking them if they would offer their bonds to us at eighty cents on a dollar.

MR. WEBBER: Was it a form letter, one to each bondholder?

MR. SMITH: It was practically the same: I won't say they were exact duplicates, but as far as the details went they were exactly the same. I might have started one letter a little differently than the others because some I knew better than others.

MR. WEBBER: One letter you wrote went to Mr. John Wilson?

MR. SMITH: John Wilson, that is right.

MR. WEBBER: I don't need to read this into the record because we have it in our file, but for the benefit of the Committee I will read the letter and you can comment on whether this is a fair cross-section of the letters you wrote practically everybody.

(Letter read off record by Mr. Webber)

Now the letter which I have read is a fair cross-section of the letters you wrote the bondholders on or about April 10th?

MR. SMITH: That is right.

MR. WEBBER: In using the word "We" throughout -- "We will do this" and "We can do this" -- you were proceeding under the authority which you felt you had, Mr. Smith, or the authority which you felt you obtained February 17th, or both?

MR. SMITH: That is a hard question to answer. I would say this: We were proceeding in good faith. We had believed all the time, it never entered our minds that the Commission had gone as far as they had with us -- we never heard any word of dissention down there about our plan -- it never entered our mind. In other words, they came to us on this thing and said, "Can you present a plan?" We presented the thing. There were very few suggestions we got from them. We were asked to work this thing out. I would say we don't need any authority from the Commission to approach bondholders, we can approach them any time we see fit.

MR. WEBBER: By "we" you mean Smith, White and Stanley?

MR. SMITH: Yes. We didn't put the Commission on the spot in any way, shape or manner on that.

MR. PAYSON: That letter does not sound to me like the Ela plan, it sounds like the February 17th plan. You talk about issuing \$50,000 bonds and about all creditors.

MR. SMITH: What we were trying to do was get one class of creditors on paper on the thing. The Ela plan to our mind was just one step. We still would never have gone through with just the Ela plan. We go down through with

this proposition and they accept that proposition and we say we still want to go ahead and work this situation out in Eastport. We had never given up the Eastport plan.

MR. PAYSON: You never fell in completely with the Ela plan?

MR. SMITH: Absolutely not. It didn't do anything as far as settling anything in Eastport; it just gave one class of creditors more and wouldn't work. You were really giving one class of creditors a chance to get some cash. What we were trying to do was just to get these fellows on paper. If you could get one class of creditors to agree absolutely on the thing then we felt we had the thing half way through.

MR. PAYSON: Then this was the same old February 17th plan?

MR. SMITH: It was.

MR. STANLEY: May I interrupt to say that it seems to me it was one phase of the February 17th plan.

MR. POULIN: Wouldn't that be the February 17th plan addressed to one class of creditors?

MR. SMITH: That is right.

MR. POULIN: It was just addressed to the bondholders?

MR. SMITH: That is right.

MR. DOW: In other words, it included the Ela plan as part of the whole thing?

MR. STANLEY: All Ela ever said in effect was, " I suggest you clean up one corner of the plan," and that is what this

this might have accomplished.

MR. SMITH: I would just like to make this statement for what it is worth: that Mr. Ela is still Commissioner of the City of Eastport and I don't know whether Mr. Ela is firmly convinced he would like to see this thing cleaned up or not. I would just like to make that plain here, and I kept that in mind all the time I was talking with him.

MR. PAYSON: Is that a suggestion, Mr. Smith?

MR. SMITH: It is a statement made and realized in view of what we have done here.

CHAIRMAN DOW: I have one question I would like to ask: Of those taxes past due how many of them are since the City of Eastport went under State control?

MR. SMITH: None of them.

CHAIRMAN DOW: The state has paid current taxes?

MR. SMITH: Yes. That is one thing I think is entirely wrong. The Commission has been paying current state and county taxes for a period of five years but they have not paid one cent to bondholders in interest, which is just as much of a current obligation as state and county taxes.

MR. BELMONT SMITH: Haven't they paid all of the bills too?

MR. DONALD SMITH: They have paid all other bills outside of current interest on bonds, which I maintain is just as much a current obligation as state and county taxes.

The bonds carry interest payable semi-annually and it is just as much an obligation as any other obligation that the State has taken care of.

CHAIRMAN DOW: I understand, Mr. Smith, since the State has taken over it has paid all current bills and all current taxes except interest on bonds?

MR. SMITH: That is right.

We come to the point where, if you will pardon me, I will say "merry Hill" broke loose. The next day I expected to hear something and I did get a call from George Hill. He has always been very cordial and he was that day. He called me down and very diplomatically laid me out. I was never laid out any better than I was that day. I came out of my meeting with him and I can remember very distinctly the last thing he did was help me on with my coat; and I will say I came out of there feeling I was not very many steps removed from one of the fellows down in Thomaston. I began thinking the thing over and I says to myself, "We have been working on this thing six years and have come to a point where I am to blame for the City of Eastport plan not going through. I had made a terrible mistake, a vicious mistake. The thing began to get worse and worse." I left that meeting and went back home and it took me a day or two to think that one over. Then Mr. Peabody, of Eaton & Peabody up in Bangor, is an attorney who controls some of the bonds, and I called him up or he called me up, I don't know which it was -- it

does not make any difference -- he called me up and asked me if I would meet him over in Augusta. He said he would like to know what was going on in Eastport, he had not heard anything for quite a while, and he asked me if I would meet him and have dinner with him. I came over and had dinner with Mr. Peabody. We had a nice little talk and I told him the position I apparently was in innocently -- and I still feel I am right regardless of what anybody says, and I would do it again. We came out from dinner and we met Mr. Hayes and that was really the climax. Mr. Peabody wanted to talk with Mr. Hayes. He said, "Let's go up and talk with him." We went up and started to talk with him and Mr. Peabody said, "Do you know Mr. Smith?" Mr. Hayes lit on me. "Know him?" -- I wont attempt to say what he said because I was a little bit excited myself. I have been insulted a good many times but never more forcibly. So I quit then. We were going over to talk with George Hill. I says, "I am going home," and I went home.

MR. WEBBER: Let us get this clear, Mr. Smith: the subject matter of your discussion with Hill was your sending out the letters to the bondholders?

MR. SMITH: That is right. That is the first inkling I had that the Commission was not in full accord with our work and that there was some question about whether they had given us definite instructions to go ahead on this plan, whether they definitely said they wanted us to go

ahead on it. I heard them say so in the meeting.

Then I went back home and I asked Stanley: "Am I wrong on this thing? Didn't George Hill ask Belmont Smith first and ask Mr. Hayes afterward if that was what they wanted to do and they both said "Yes" after we had discussed that plan considerably? I may be wrong on it, but I would just like to have you verify it," and he did.

I may be wrong on this, but I did feel along the road -- you see after I went and approached Mr. Ela and talked with some of the bondholders Mr. Hill went down to Eastport and I found out talked with some of the bondholders: he was talking and apparently, I thought at that time, he was trying to help out the situation, and he still may have been, but it looks to me as if something else happened there and we never knew what it was. I don't know to this day. But it seems to me to be awful childish for a Commission to go ahead with a thing as important as this problem was and then point to a fellow here who has been working on the thing conscientiously for six years and say, "You made one****of a mistake."

The next thing we knew -- I heard this before from two different sources which I will not disclose -- that the Commission was working on a plan which called for 76 per cent payment to bondholders.

Now we have done quite a bit of business in our day. We talked with a good many groups. You see in the bond business

the thing is all done on faith: we never get a written approval of this or that, but if we go to a community and agree to take bonds we take bonds. When we make our statement we have got a liability. When they agree to sell bonds all they have got to do is say so: we haven't got to go through a lot of legal technicalities. We felt that the Commission was acting in good faith with us until after that letter there and then we began to question whether they were acting in good faith or not. It looked to us very much as if they had gone and drained us of information and then stopped.

I told Mr. Hill at the time I talked with him -- I did get that far -- I said "I have written this letter and I am still going to find out whether the bondholders will agree to this or not."

We went ahead and got either written or verbal agreements from all of the bondholders with the exception of the State, and the State had always maintained they would take anything which other bondholders took for bonds which are in the permanent school fund or whatever it is down there -- at any rate there are some Eastport bonds the treasury has.

MR. WEBBER: So you did get the consent of eighty per cent from all bondholders except the State?

MR. SMITH: From all bondholders except the State.

MR. WEBBER: Was there anything that happened between April 10th, other than you have described, until you submitted your alternative plan?

MR. SMITH: Except we got to hearing more and more about this 76 per cent.

MR. WEBBER: That was the Commission's own proposition?

MR. SMITH: Yes; and it was a little bit disturbing. A thing like this has to be put through with the cooperation of everybody: you can't have this group arguing with that group and expect to get anything done.

MR. WEBBER: Now can you discuss what your proposition of May 14th was, how you happened to make it?

MR. SMITH: Well, we followed the thing along as I told Mr. Hill we would. We still didn't hear anything more from the Commission. After we got our replies, after we contacted all of the bondholders, - it took quite a while to get decisions from all of them, - we sat down and wrote a letter to Mr. Hill offering him \$61,000 worth of City of Eastport bonds at \$800 principal amount for the bonds, and in due time we received a letter from Mr. Hill as Chairman of the Commission to the effect that they refused to accept our proposition and the reason for refusing to accept it was that they were working on a proposition of their own which in due time they would attempt to put through.

MR. WEBBER: You made your proposition May 14th?

MR. SMITH: I guess that is right.

MR. WEBBER: And that was to offer \$58,000 of bonds of the City of Eastport, stating what the issues were, at a rate of eighty cents on a dollar?

MR. SMITH: Yes. I think there are three bonds we don't know where they are, nobody knows where the bonds are held.

MR. WEBBER: Plus a fee for your firm of \$5000; and that offer was for all but no part of the \$58,000?

MR. SMITH: Yes.

MR. WEBBER: And you then had those \$58,000 of bonds under sufficient control so you felt you were in a position to offer them?

MR. SMITH: Yes.

MR. WEBBER: And then on May 6th Mr. Hill wrote you as follows:

(Letter read by Mr. Webber off record)

And on May 18th you wrote indicating that if there was real interest in the offer the time for its acceptance might be extended somewhat?

MR. SMITH: That is right. That letter was written for a reason I thought was a very good reason. We had from a certain source we felt was pretty important -- it was pointed out that we might not have given them time to accept it.

MR. WEBBER: And on May 21st Mr. Hill wrote you a letter which we have in our files and which I will read.

(Letter read off record by Mr. Webber)

MR. WEBBER: That was a letter that you received, and you state that was the first official notice you had that the Commission had adopted a different plan of compromise: you had simply picked it up in the field prior to that time?

MR. SMITH: That is right.

MR. WEBBER: Can you tell us briefly what has happened since then so far as you are concerned?

MR. SMITH: I do not think anything has happened. There apparently wasn't much of anything we could do. I still believe that it would not be possible for the Commission to put their plan through: they cannot put a plan through which calls for one hundred per cent of the bondholders because we have got some bonds under control, and I will be ***** if we will. We have been in this picture too long to get hooked like that.

MR. WEBBER: On that point, did you meet Mr. Hill and have a conversation with him sometime in the early part of June?

MR. SMITH: I met Mr. Hill in the Congress Square waiting room. I don't know just what we did say.

MR. WEBBER: You advised him at that time that you owned some bonds?

MR. SMITH: We owned some bonds and controlled others, and if they were considering a plan predicated on one hundred per cent approval of the bondholders it could not be put through -- and I state it very definitely once more.

MR. WEBBER: Now, to get this clarified, that is your present position?

MR. SMITH: Absolutely.

MR. WEBBER: It would be fair to state that your present position is that unless your compromise proposition of February 17th is accepted and put through you will refuse to accept as a bondholder any other compromise proposition so that no other compromise proposition is possible?

MR. SMITH: That is a pretty rugged statement to make.

MR. WEBBER: I am perfectly willing for you to clarify it.

MR. SMITH: This thing is not a question of money. We have spent all kinds of money on the City of Eastport. We don't give a hang about the City of Eastport. I don't care whether the Commission goes ahead with the City of Eastport plan or not. We have carried this crusade far enough so if you fellows don't want to do something on Eastport we will give up. We will eventually get something out of the City of Eastport because we are going to get a certain percentage for collecting for our bondholders. We have agreements with bondholders for a certain percentage for collecting the bonds. We wrote to the bondholders that any other agreement would be cancelled: we were giving them the entire eighty per cent, but if it comes down to a question of where somebody else comes into the picture we still will collect fifteen per cent on the bonds which we have under control. In other words, we are going to

get something, going to get some money out of these bonds if any money comes to the bondholders.

MR. WEBBER: How much is your Waterville Realty claim -- how much is the suit for?

MR. SMITH: I don't remember. The suit is on a \$500 bond, but, as I say, it was just a suit.

MR. WEBBER: And that wasn't a suit on an ordinary account payable, it was a suit on a bond?

MR. SMITH: Yes.

JUDGE POWERS: The witness will correct me if I am wrong -- I am speaking from recollection -- but in my correspondence with Harvey Eaton -- he proved the claim and it is my recollection he stated the money for that bond should go to a Skowhegan bank.

MR. SMITH: That is right. That particular bond we brought suit on was owned by the Skowhegan Savings Bank: the Waterville Realty Corporation did not own the bond at the time we brought suit.

MR. WEBBER: It was transferred?

MR. SMITH: It was transferred at the time of the suit.

MR. WEBBER: I want to be sure I clarify your present position. It is still your firm conviction that the affairs of the City of Eastport ought to be compromised if possible for the sake of the creditors?

MR. SMITH: That is right.

MR. WEBBER: Now do you still feel that your compromise proposition is possible?

MR. SMITH: Well, conditions have changed a lot. Before I answer that I would like to make one other statement. One other reason why we wouldn't go along with any plan by the Commission is that it would not take care of the situation. What we have tried to point out right straight through this thing is that if the Commission who is acting for the State of Maine goes to these creditors and compromises the situation the City of Eastport will never be able to re-establish its credit. It is a different proposition for bondholders and other creditors voluntarily to agree to accept a certain amount of money. In one case they are forced to accept it and in the other case we are trying to put through we haven't any connection with Eastport; we are a dealer, we go out and bring two parties together and say, "Here, we can find a market for your security, for your claim. Will you take such a price for your claim? And they agree to take it voluntarily.

MR. WEBBER: Isn't it also true that any plan that the Commission has worked on has also been on the basis of a voluntary acceptance by creditors of the City of Eastport?

MR. SMITH: Possibly they might feel so, but I do not think it would go down in the records as a voluntary settlement. I have talked with a good many bond dealers about this situation. I do not believe you would ever find a market for your City of Eastport bonds. In other words, once a community defaults or compromises they are done. Eastport would never have any credit. One hundred years from

now they would still look back and say: "One hundred years ago you paid eighty cents on a dollar for your bonds and you did it through a Commission of the State of Maine."

In this way you would not get the publicity that would follow if the Commission worked this out. We have already done that with one place and I would be willing to gamble that not a man in this room knows it except Belmont Smith and Mr. Hill who were particularly interested.

MR. WEBBER: Mr. Smith, hasn't it at some stage of the game been brought to your attention there is no provision in the law for a compromise of county taxes?

MR. SMITH: That is right.

MR. WEBBER: Now how do you propose to accomplish the same result in some legal manner?

MR. SMITH: County taxes are due down there now. There is a Commission here, the Tax Assessor's Department, that has the power of abatement: they can abate a certain amount of this year's tax and offset that claim.

MR. WEBBER: Your suggestion is in effect to compromise back county taxes by paying the back county taxes in full but abating current taxes in like amount?

MR. SMITH: Yes, if that is the only way it can be worked out and apparently it is at the present time; and then follow it up with enough legislation that would allow the county to do it.

MR. WEBBER: It is your suggestion as a matter of law that all accounts payable stand in as favorable a position legally provided they were properly contracted within the debt limit, as the municipal bonds; they are as valid and as legal obligations and have as much priority in rating?

MR. SMITH: You could run into an awful lot of lawsuits on that because your bonds still have a legal opinion. That is one reason why bonds are so important in municipal finance.

MR. WEBBER: I am assuming something, and I simply want to get this on the record. Isn't it a fact that assuming a proper legal contraction of the debt in the first instance that there is just as much of a priority in the standing of an account payable as there is of a bond?

MR. SMITH: That is right.

MR. WEBBER: In other words, it is not like an ordinary commercial mortgage bond which has a first lien behind it?

MR. SMITH: That is right.

MR. WEBBER: Now with that assumption, do I understand what you say about the possibility of bringing accounts payable into line is simply you think they can be persuaded to take less than eighty per cent? In other words, I am dealing now with the possibility and probability of a possible compromise settlement.

MR. SMITH: I will say this: The bondholders feel very definitely there is not any question of the legality of their bonds: the accounts payable still haven't established

the legality of their claim, that still is up in the air, and we feel it would be better to approach those accounts payable at this time. We have already talked with some of them. They don't know whether their claims are going to be declared legal or illegal.

MR. WEBBER: In other words, you think you might be able to persuade them to take less to avoid further litigation?

MR. SMITH: Yes. And we still feel that would be a better proposition, to go ahead and make a payment of these bills than to let this thing go into court and possibly have a great number of claims thrown out.

MR. WEBBER: I am going to suggest, Mr. Chairman, we now have questions by the Committee and then perhaps it might be well for us to take a five-minute recess and then have questions from any of these gentlemen.

MR. FOULIN: I want to ask a question in connection with what Don just asked.

Is it ~~your~~^{my} understanding under your February plan that the interest on the bonds was to be cancelled?

MR. SMITH: Absolutely.

MR. FOULIN: And eighty per cent of the principal amount was to be paid?

MR. SMITH: That is right.

MR. FOULIN: Now taking the compromise together with the principal amount of the bonds and the interest accumulated, wouldn't the amount paid approximate about

about the same amount that was proposed on the accounts receivable?

MR. SMITH: I think it would figure about 55 per cent.

MR. POULIN: In other words, that principal sum of the bonds and interest accumulated, while you would be paying eighty per cent of the principal sum, if you took the whole sum of the principal and interest it probably would amount to about the same.

MR. SMITH: There would be very little difference. That is the point we have considered. That is the argument we have used.

MR. POULIN: I was just asking that in connection with what Mr. Webber brought out a few minutes ago.

MR. SMITH: That is a very good point.

MR. HILDRETH: You said, Mr. Smith, that the bonds that you controlled, not owned, would not consent to any plan by the Commission. Have you their agreement in writing to that effect?

MR. SMITH: The bonds that we control we control in writing.

MR. HILDRETH: When you deal with the Commission you are willing to go on faith, but not with your bondholders?

MR. SMITH: I do not know just what you are getting at.

MR. HILDRETH: You just said this business was all faith, but I was interested to see when you got your control of your bondholders whether you had protection in writing or not.

MR. SMITH: Yes; but that happened a long time ago: it was when we started our suit against the State. We got ready to start our suit against the State and then we had to get actual consent from some of the bondholders. What we were doing at that time was putting some of the banks and others down on paper that they would agree to pay us a commission. In that instance the thing might run along for years.

MR. HILDRETH: I think you were wise in doing it. No objection to it at all.

(Brief Recess)

MR. WEBBER: Now in the interests of time we have more or less agreed that questions of Mr. Stanley and Mr. Smith will be addressed for the most part by Mr. Burkett as attorney for the Commission, although I do not want to prevent any of you gentlemen from asking questions. Perhaps if you have any questions you will be willing to write them down on a pad and pass them to him. Perhaps that will save a little time.

MR. BURKETT: I do not think we want to indulge in any long cross-examination of Mr. Smith. I have looked forward to an opportunity sometime before this hearing breaks off to explain to the Committee what the board has been trying to do in fourteen towns in the State. I think we had better stick to this one issue now.

It is true, isn't it, Mr. Smith, that the first conference that was held with you was between Mr. Belmont

Smith and myself, at Mr. Smith's suggestion, at Waterville sometime in February?

MR. SMITH: Yes.

MR. BURKETT: And at that time we canvassed the situation existing as far as the board was concerned in getting out of the fourteen towns that the board is in?

MR. SMITH: That is right.

MR. BURKETT: And we did not at that time over-emphasize the situation in Eastport any more than Connor, Van Buren, Kingman and some places in a worse situation than Eastport is?

MR. SMITH: That is right. We followed along on Eastport because we had already done some work with Eastport and because it was the biggest place under State control, and our talk was along the lines that if we got started on Eastport we would hold our organization ready and follow through and do what we could on the other twelve or thirteen towns.

MR. BURKETT: It was the feeling and the agreement of all of us at that time that it was really necessary that the financial affairs of these towns be adjusted prior to the time that the equity court reported on their indebtedness? In other words, the best time to make settlement with the creditors of any of these fourteen towns was while there was uncertainty existing in the minds of all of them as to whether or not their claims were valid?

MR. SMITH: That is right. We felt if we waited until the equity matter was accepted or whatever happens in the court that it would be too late then, that this claim would be allowed and that claim would be allowed, and then it would be much harder to sell them with the idea they should take eighty per cent if the Court said, "Your claim is legal." We have always talked all the way through here that this court action was not a solution, that after we got all through the court would still find the cities and towns -- not only Eastport but all these places -- with a lot more legal indebtedness than they could take care of. In other words, they would be way over their debt and all declared legal and you would still be back where you started a long time ago except you would have a few obligations that were thrown out, and that would be spread around and the credit of the community would be that much worse.

MR. BURKETT: At that time it is true, isn't it, that the only report that had been filed by the Master in any one of these towns was the Van Buren report?

MR. SMITH: Yes.

MR. BURKETT: And in Van Buren the legal debt limit or the borrowing capacity, using the two terms interchangeably, was about \$50,000, and the city or town owed, according to the Master's report, around \$185,000 or \$190,000?

MR. SMITH: Yes.

MR. BURKETT: And that town, like Eastport, had bonds outstanding I guess even in a larger amount than Eastport. Didn't we all agree too at that time that in order to work out a settlement we had got to get the bondholders to take less and try to get the State to take less, and unsecured creditors less than their claims?

MR. SMITH: That is right.

MR. BURKETT: Subsequent to that meeting that Mr. Belmont Smith and I had with you, you came down to Augusta and talked with the board on one occasion when I was present?

MR. SMITH: That is right.

MR. BURKETT: And at that time several methods of settlement were suggested?

MR. SMITH: Three different methods. Is that the first meeting?

MR. BURKETT: Well, one or the other of these meetings we talked over several methods of settlement?

MR. SMITH: That is right.

MR. BURKETT: And at that time it was the feeling of the representatives of the State that the State should have its taxes in full?

MR. SMITH: That is right.

MR. BURKETT: And the county felt the same way. And you had contacted, or some of us had, some of the bondholders, and it was understood at that meeting the bondholders were reluctant to take any percentage less than the State took?

MR. SMITH: In our first meeting I think the State and the county insisted on one hundred per cent, so our plan was predicated on one hundred per cent. That is why we had three different plans. But after we talked with some of our bondholders they said, "Absolutely no; we will fight the thing through." That is one of the things when we went down to the second meeting, that is the first thing we brought up. We couldn't do anything; we wouldn't attempt to do anything unless the State and county would accept the same amount that the bondholders took.

MR. BURKETT: The amounts that we were going to pay the various classes -- I mean by that the State and county and the unsecured creditors -- were varied: we didn't at any of these conferences get down on any basis of a flat settlement to anybody?

MR. SMITH: No. I think we hovered between 75 and 80. I think in the conversation the percentage was brought up, but the exact percentage, we didn't care particularly what the exact percentage was.

MR. BURKETT: But we all agreed in order to make a settlement it would be necessary to sell some new bonds in Eastport?

MR. SMITH: That is right.

MR. BURKETT: And that those bonds could not be sold unless all of the debts of Eastport were cleaned up?

MR. SMITH: That is right. You couldn't get the legal opinion on your bonds unless all other obligations were cleaned up.

MR. BURKETT: So no matter what the varying percentages were every creditor had to be paid something and gotten out of the way before you could have issued bonds?

MR. SMITH: That is right.

MR. BURKETT: There was some talk there at that meeting about what your fee was going to be?

MR. SMITH: I don't really remember any talk about commission. At the first hearing Mr. Hill mentioned we should bring in a plan and our fee, and the only thing I remember in the second meeting was Mr. Hill asking us why we mentioned our fee, and I made the statement that the only reason we mentioned our fee was because we were asked to do it at a previous meeting. That may not be right, but that is the way I remember it.

MR. BURKETT: You never did tell the board at that second meeting what you would require as a fee definitely?

MR. SMITH: Oh yes, absolutely, we told them, and we had this figure worked right in our plan. That was part of the plan.

MR. BURKETT: At that time you didn't have any options on these bonds and any arrangements with the bondholders to collect a commission from them?

MR. SMITH: At that time the only agreement we had with the bondholders was the agreement which we had way back, that we would get fifteen per cent of the amount which we collected for the bondholders. That was something that had

nothing to do with the Commission: that was started way back when we started our suit.

MR. BURKETT: Didn't you explain to the Commission and me at that time you had an agreement with the bondholders to get a commission on those bonds?

MR. SMITH: I don't know that I explained it: I told the Commission all the way through that we controlled some of the bonds: I never told them the amount that we controlled and I never said anything further. I felt they sort of ridiculed the statement. I always felt when I made that statement the Commission never really believed we controlled any bonds. I don't know, I may be wrong, but that is the feeling I got. We never had any discussion of it so far as I know.

MR. BURKETT: At any rate, when you left the second meeting it was with the understanding the board was going to let you know sometime ---

MR. SMITH: Not sometime, just as soon as possible.

MR. BURKETT: Well, there wasn't at that meeting any definite agreement entered into between you and the board authorizing you to go ahead on any plan?

MR. SMITH: I would disagree with that. I feel very definitely that Mr. Hill polled Mr. Smith -- Mr. Hill agreed himself that the Commission should go through with the plan, that he asked Mr. Smith first if he believed the Commission should go along with it and he asked Mr. Hayes and Mr. Hayes said, "Yes."

MR. BURKETT: Wasn't that some plan rather than any definite plan?

MR. SMITH: As we believed it was the plan that we finally agreed upon, the third plan, which called for the purchase by us of \$50,000 worth of bonds, because in the previous discussions there Belmont Smith had stated definitely that the State would not take new bonds, that he could not conscientiously recommend new City of Eastport bonds at one hundred cents on a dollar or some such figure when he was going to turn over bonds which were held in State funds at 75 or 80 per cent.

MR. BURKETT: To get back to that, the plan you worked out contemplated the State and the county would take some of these new bonds as partial payment of their indebtedness?

MR. SMITH: Plan No. 1 or 2 was predicated on that, but the plan we recommended and which the committee apparently approved of was that we purchase \$50,000 of City of Eastport bonds, and we made a definite statement we would purchase the bonds, and that was apparently the only plan which the Commission wanted to work out because the State says definitely they won't take any bonds and they don't think the county could legally take bonds.

MR. BURKETT: Your second plan, in which you definitely offered to buy \$50,000 of bonds yourself?

MR. SMITH: That is right: we made that definite offer.

MR. BURKETT: You don't mean to say you understood when you left that second meeting everything was fixed up between you and the board and you had authority to go ahead with the bondholders?

MR. SMITH: I believe when we left that meeting everything was fixed up and the only question that was in the minds of the board was the percentage which we should offer to the creditors.

MR. BURKETT: That had not been definitely fixed?

MR. SMITH: That had not been definitely fixed.

MR. BURKETT: So you didn't have any definite agreement?

MR. SMITH: That is right.

MR. BURKETT: And you called up Mr. Hill on three or four occasions on the telephone, asking him when the board was going to let you know if they approved the plan and give you authority to go ahead?

MR. SMITH: I wouldn't dispute that. I don't remember what happened. I would say I would agree with that, if that will help matters.

MR. BURKETT: At any rate, you agree with me when you left that second meeting there had not been any binding arrangement between you and the board?

MR. SMITH: There was no written agreement.

MR. BURKETT: You stated a few minutes ago you had not decided on the percentage?

MR. SMITH: Yes.

MR. BURKETT: Wasn't that a vital part of the plan?

MR. SMITH: What difference does it make? We had a plan to present to the creditors: we could present 80 per cent or 75 per cent. All we cared about was using the cash in the City of Eastport, and apparently that is all the Commission wanted -- I wouldn't say the Commission, but Mr. Paine, who had quite a lot to say at that meeting, he was going to be very sure the City of Eastport wasn't left with ten or fifteen thousand dollars in cash -- and that was one of the things we insisted on, but as far as percentage goes I do not think that means anything. And if you want to carry that further, as far as our letter which we have been criticized so severely for, getting the bondholders to approve a plan of eighty per cent, there is not any reason in the world why that couldn't be changed afterwards. All we were doing was getting the bondholders lined up. We could have gone to the bondholders and said, "This thing works out a little bit different." We had already talked all the way from 70 to 80 per cent and even a lower figure so we didn't care what the figures were, but we arrived at 80 per cent because it looked as if the Commission was hiding cash on us and had not told us the exact amount of cash available down there. That was one of the first things we asked the commission, "Give us the exact amount of cash you have to work with and we will go ahead and work out this plan." They didn't

give us the exact amount of cash they had to work with we found afterwards.

MR. BURKETT: That is the point I am making: the board never gave you any authority to offer bondholders 80 per cent.

MR. SMITH: I would agree with that statement. And we didn't need any authority from the board.

MR. BURKETT: And you didn't do any more toward putting your plan through than send out that letter, because subsequent to sending out that letter Mr. Hill came down and accused you of having exceeded your authority?

MR. SMITH: That is right.

MR. BURKETT: And between the time when you had the second meeting of the board and the time Mr. Hill called you down you never had any word from the board authorizing you to go ahead and make any definite offer to either bondholders or unsecured creditors?

MR. SMITH: That is right.

MR. BURKETT: And that letter you sent out to the bondholders was without any authority from the Board?

MR. SMITH: That is right.

MR. BURKETT: And that is the one thing that occurred that started trouble with Mr. Hill and Mr. Hayes?

MR. SMITH: Apparently. I am not so sure about it. We never have been sure. We never had one word from that board. You imagine fellows coming down and offering to buy \$50,000 worth of City of Eastport bonds and put through

a plan and come back from that board and for a period of six weeks never hear a word from them. You might think they thought "We have got all we want out of these fellows: let us go ahead and put a plan through."

MR. BURKETT: In other words, you sent out that letter offering 80 per cent after you heard the board was working on another plan of its own?

MR. SMITH: Yes. And you made a statement which I would like to qualify a little bit. I just happened to think of something there. I still called up Belmont Smith, who was one of the Commissioners, before I sent the letter out, and I talked with Ben Ela who was your agent down in Eastport. I called up Belmont Smith and he approved of sending out the letter. I don't know whether it amounts to anything.

MR. WEBBER: You didn't have Mr. Hill's consent?

MR. SMITH: I didn't have Mr. Hill's consent and I had not talked with Mr. Hayes, but I supposed the Commission was working as a commission; I didn't suppose there was any friction between the commission; I had never seen any before.

MR. STANLEY: This was all brought up as an offer to buy: I do not think it was an option to buy.

MR. BURKETT: You never told the board at any conference I was present you had options on those bonds and that you and Mr. Eaton had been dissatisfied with the way the

the board operated down in Eastport and Mr. Eaton brought a suit on that one bond of his in an attempt to disrupt the work of the board, feeling just as you said a little while ago that the board was illegal from its inception?

MR. SMITH: I said that and I still mean it. But we didn't intend to disrupt the board. Holley, who was Chairman, sat right in that meeting and he said "We would be tickled to death if Mr. Eaton would enter into this thing and bring suit against this Commission; we would be tickled to death to find out where we stand and get this thing clarified." If that means we did something to disrupt the action of the board, we did.

MR. BURKETT: Wasn't it true that Mr. Eaton's approach to the problem all the way through was he wanted to oust the board from jurisdiction in Eastport if he could.

MR. SMITH: Mr. Eaton was the attorney hired by us.

MR. BURKETT: Mr. Eaton came down to a term of court at which I was present when this Waterville Realty case was pending -- it had been postponed on two or three occasions -- and stated he would be perfectly willing to postpone it but his clients, the Waterville Realty Corporation, would not do it, and they had insisted he go through with this thing and taking it to the Law Court was necessary. Mr. Holley and I called up the bank in Waterville and asked who the Waterville Realty

Corporation was and they said "One of Mr. Eaton's personal holding companies."

MR. SMITH: He has nothing whatever to do with it. It is controlled by Mrs. Smith and myself.

MR. BURKETT: You and Mrs. Smith brought this suit at a time when the board was trying to solve the problem down there in Eastport with the idea, if you could, of ousting the board from its jurisdiction in Eastport?

MR. SMITH: I do not think that is fair.

MR. BURKETT: You resented having the board in Eastport, and the fact the board was there had disrupted your plans to refinance the city?

MR. SMITH: Not in any way, shape or manner.

MR. BURKETT: What was your point in bringing that suit on that \$500 bond and carrying it through to the Law Court?

MR. SMITH: Our point was to arrive at some solution of the general problem we are faced with for the State. As I have said a number of times we do not care about Eastport particularly. We brought a suit which apparently the Commission was glad to have brought. You find lots of law suits brought not because of any feeling against a party but just to clarify the situation. I think myself this suit has accomplished a devil of a lot when it brings the matter to a point such as it has been brought.

MR. BURKETT: Wasn't it true that suit went to the Law Court not on the merits of the obligation you hold but on an

attempt to declare the law unconstitutional and get the board out of Eastport?

MR. SMITH: I didn't give a hoot about the board in Eastport. We felt the law was unconstitutional and had it so declared. We wanted a law that could operate honestly, not hide money in Eastport and tax people there and not give them any representation in government. We fought for that years ago. We still have got it in this committee, and in this committee you have got taxation without representation.

MR. BURKETT: You tried to do everything you could to get the board out of Eastport?

MR. SMITH: I didn't care about the board; I tried to get a law that was workable. If you are not convinced of it now you ought to be. You have got an unpaid commission, they haven't got time to study the problem in Eastport, and a lot of them don't know how to work out the problem down there. I am not saying that in disparity of the committee whatever, but municipal finance comes under a specialized heading, very few people know much about it. You will agree there are very few lawyers who know much about municipal finance or municipal law.

MR. BURKETT: I will agree to that. But, in spite of everything you did to get the board out of Eastport, Mr. Belmont Smith, recognizing your experience in municipal matters and the fact you had financed some towns successfully, conferred with you in an attempt to work out a problem we

felt was over our heads?

MR. SMITH: I will say in spite of your belief we were trying to oust the commission you did approach us: you knew we were working against you all the time on the thing, but in spite of that you approached us and asked us to work the thing out.

MR. BURKETT: And told you at the time if you could do something in Eastport there were thirteen other towns, some of them much worse than Eastport, where we could not afford to pay more than ten per cent to anybody that we would need some help on?

MR. SMITH: That is right. And I think also at that meeting we said, "What will a thing like this be worth?" We don't know: there is no precedent for it. We talked with a number of people about it. The reason we stuck our fee in there, we didn't know but the Commission might criticize our fee. They never criticized the fee except to ask why we had the fee in there.

MR. BURKETT: You will concede all your relations with the board were friendly?

MR. SMITH: Perfectly.

MR. BURKETT: Until you sent out this 80 per cent letter, which you now admit you did without any authority?

MR. SMITH: I will say without the authority of two members of the board, without the official authority of the board.

MR. BURKETT: And you sent that letter out at the time feeling a little left out or a little spiteful because you heard the board was working on a plan of its own to pay everybody 76 per cent, which apparently did not include you? Isn't that what you told me the other day in Portland?

MR. SMITH: That is one reason that we got the bondholders together.

MR. BURKETT: One reason you sent that letter out was you heard there was a plan in process of being submitted to the creditors which if it went through did not include you?

MR. SMITH: That is one reason, but we had other reasons for sending the letter out. We had other reasons. Ela is still a good man: he still said this was the way to approach the subject. We didn't know whether we were approaching it right or not. We had not had one word from that commission in a period of five or six weeks and we didn't know what happened. I tried to find out from Mr. Hill. I say that because you tell me I did. I don't remember calling him or not.

MR. BURKETT: You just said you tried to get in touch with Mr. Hill to find out what was holding the thing up.

MR. SMITH: I will agree if you want me to.

MR. BURKETT: You understand I am not trying to get you in a hole, Don; I still think there is opportunity for

you to work on this thing, help these towns out, and I would be glad to see you do it; but I want to make it perfectly plain to the committee you had not had any authority to go ahead at the time you sent out that eighty per cent letter.

MR. SMITH: I wouldn't agree to it. I do not think you can make it perfectly clear; it could not possibly be clear. We were operating with the Commission's consent. The statement we had worked with the committee as long as we had worked with them was proof enough in itself. The fact you invited us down there to work the thing out and had gone along as far as you had was proof we were working for the Commission; and when you take a subject as important as this and take a little letter getting option on the bonds as going to throw the whole thing out, that is carrying the thing to ad absurdum as they say in mathematics. If some members on that committee do not like me, I do not care: I can still do a certain job and that is the important thing today.

MR. BURKETT: In any event, after that letter was sent out and after you and Mr. Hayes had had your discussion which you so aptly described, you next met Mr. Hill down in Portland and told him you controlled practically all the bonds?

MR. SMITH: No; just told him we controlled some of the bonds. That is the first time I ever made the statement we owned some of the bonds.

MR. BURKETT: You never had told the committee you owned any bonds?

MR. SMITH: We didn't own bonds before. We couldn't: we didn't own bonds before.

MR. BURKETT: You went out afterwards and got some of them, either by ownership or control, and then when you met Mr. Hill down to Portland about the time of the Republican Convention you told him you wouldn't take less than one hundred cents on a dollar for what bonds you owned?

MR. SMITH: I think that is right, approximately right, yes.

MR. BURKETT: Which in your opinion, knowing the attitude of the State which was in no event would the State take a less percentage than the bondholders, would be an effective bar to any settlement in Eastport as long as you held that position?

MR. SMITH: We felt so.

MR. BURKETT: And you knew that position which you took would absolutely prevent any settlement with Eastport?

MR. SMITH: Yes.

MR. BURKETT: And you did it with the idea you were going to hold up any settlement with Eastport until you yourself got in on it in some way?

MR. SMITH: We felt we had a plan to work out in Eastport and we could work it out, and we didn't feel the Commission could work the thing out satisfactorily, and I still think so.

MR. BURKETT: And you were not willing for the board to

go ahead and try to work out 76 per cent?

MR. SMITH: No; not after they drained us dry of information we had been working up.

MR. BURKETT: And then you go to this committee or some of them and complain the Commission are not doing their duty in not making a settlement of Eastport?

MR. SMITH: I would like to bring up one thing, how this thing happened to be brought about. I was appointed Chairman of the Republican Finance Committee for Kennebec County and we had a little conference up in the Elmwood Hotel with some of the boys. It was done in fun. I said, "Why should I vote for the Republican Party? We have been working six years to try to get something through for the good of the State and never have been able to get cooperation in any way whatsoever from a Republican group, and still I go ahead and accept a position in the Republican party."

MR. BURKETT: Did you tell those fellows at the time your insistence on getting 100 per cent blocked any settlement?

MR. SMITH: I did. I would like to have you understand our position how this came out. I said, "I believe the way this thing should be worked out and what I should do is turn this over to the other party and let them bring the facts out." I said, "I hate to do it; I have always been a Republican and I hate to bring politics into

the proposition, a proposition as important as this one is, but we have had enough trouble down here and we can't get anywhere, and I am still going to work this out if it is humanly possible before I die. It may take me most all my life to do it." Cecil Goddard, who was on that committee, said, "The thing to do is get in touch with the legislative committee." I told him I wrote a letter to Nate Tompkins two years ago and never had a reply. He said, "I will start something." So he called up a member of this committee, Bob Dow, who he knows very well and knows he can get action. Bob Dow called Don Webber and Webber called me.

CHAIRMAN DOW: I didn't want to be left out, because I was in there.

MR. BURKETT: Did you tell Mr. Dow or Mr. Webber that the settlement of Eastport which I had been working on two years had been blocked by your statement to Mr. Hill?

MR. SMITH: I never talked with Bob Dow on the thing.

MR. BURKETT: Then you do not mean to accuse the Emergency Municipal Finance Board of failure to try to work out a settlement in Eastport, but you accuse them of failure to adopt your particular plan?

MR. SMITH: I do not know what to accuse them of. It has been brought up to a ridiculous point. Holley was a man who was impossible -- an egotistical fellow who controlled the board and the board couldn't do anything they wanted to. We came in to this new board with everything perfectly friendly

and we were just as happy about the whole thing as could be until Mr. Hill laid me out one day.

MR. BURKETT: You don't even now think he was justified in doing it?

MR. SMITH: Absolutely no. I think he has made a mountain out of a molehill: the Commission has made a mountain out of a molehill.

MR. BURKETT: What could the Commission do after you said you wouldn't take less than one hundred cents on a dollar?

MR. SMITH: This didn't happen until long afterwards, until I had found out certain other facts. We were dealing with a committee and couldn't get anything from them for a period of six weeks, and then we go ahead and send out a letter and get an option on bonds which would help expedite the plan and put it through. When you do that you have got one class of creditors right in your hands, and anyone would realize the bondholders are the toughest class to handle. We have got them right in our hands, and we present them to the Commission and they refuse to take it and keep us in the air for six weeks with a liability of \$50,000 worth of bonds, and then because we sent a letter out to get an option on these bonds they say, "You have done something terrible; you have stopped the whole plan from going through."

MR. BURKETT: Wasn't it true at that time you had control of all these bonds that you wrote in and told the board you had control of all the bonds, you were trying to get

one hundred cents on a dollar for them?

MR. SMITH: I didn't ---

MR. BURKETT: You told Mr. Hill down to Portland?

MR. SMITH: That was afterwards.

MR. BURKETT: You were trying to get a fee of \$5000, and you just said you had an agreement with the bondholders to pay you fifteen per cent commission?

MR. SMITH: I also stated when I wrote to these bondholders -- that is one difference in the letters; I thought there was a little difference in these letters -- in the bonds we control we said any previous agreement we had for commission from the bondholders would be cancelled and they would get their eighty cents on the dollar. We were not trying to get both ends and the middle.

MR. WEBBER: These were letters of April 10th?

MR. SMITH: That is right.

MR. BURKETT: You said Mr. Holley refused to let you see the audit of the City of Eastport and would not give you any information about how much money there was there. Isn't it true down at the hearing at Machias when the Eastport bill in equity was tried you were there and I took you up to Mr. Ela and told him to let you see anything you wanted to in Eastport?

MR. SMITH: I think I agree with that. That was only a year or two ago. We had still been working on it four years.

MR. BURKETT: Mr. Ela told you to go down and he would show you anything he had?

MR. SMITH: What point are you trying to make now -- that that information was available at any time?

MR. BURKETT: Yes.

MR. SMITH: I went down and talked with Mr. Hayes several times, and Holley and I have fought about the thing, and I talked with members of the Legislature. I have had members of the Legislature say, "We can go down and get any information we want." I have taken them down to Mr. Hayes -- he probably will verify it. This member of the Legislature asked him to see data on the City of Eastport. He refused. This member says, "You know what you are doing: you are refusing a member of the Legislature?" He said, "I know what I am doing: I am following Mr. Holley's order."

MR. BURKETT: We agreed not to discuss Mr. Holley. Isn't it true you got along all right with Mr. Holley until Mr. Holley got it very definitely in his mind you and Mr. Eaton were doing everything you could to have the act declared unconstitutional?

MR. SMITH: Mr. Holley lied ---

MR. WEBBER: Just a minute.

MR. SMITH: There were misstatements all the way through.

MR. WEBBER: We will agree there was a very definite difference of opinion up to the time Mr. Holley went off the board.

(Recessed to 2.00 P.M.)

MR. WEBBER: Before we start what might be called the direct case for the Commission I would like to ask Mr. Smith one or two questions for the purposes of clarification.

Do I understand, Mr. Smith, that you have a feeling as a result of what has taken place that the State of Maine through the Commission or the City of Eastport through the Commission, either one, owes you any fee of either \$10,000 or \$5,000?

MR. SMITH: No. When we started in what we said we would do was go ahead and do our work: if we couldn't put the plan through we got nothing for it; or if we put part of it through we didn't have any arrangement made. As far as that goes, there is not anybody owes us anything. What we have done in the City of Eastport and the money we spent we spent of our own free will and accord. The attorneys we hired, we arranged for payment to them ourselves.

MR. WEBBER: You discussed with me the function of this committee, the Recess Committee, and the mechanics and the way we proceeded and so forth, and I outlined those things to you. I know the Committee would like to get clearly in mind your hope or expressed wish as to what this committee might do upon this subject matter. That is, we want to be sure that we clearly have in mind your purpose when you come before us, recognizing the perfect right that you have to come here -- that is what we are set up for -- but we want to listen to the other side of this picture with the idea in mind as to exactly what your

hope is when you come here. You recognize this Committee has the power of investigation of criticism of any State departments or commissions, recommendation as to policy or method, or the setting up of proposed curative legislation.

Now can you state briefly what you would like to see this Committee do if it becomes convinced of the merits of your contentions?

MR. SMITH: Well, what we hope to accomplish from this hearing is to get this committee interested in legislation that will aid communities in the State of Maine who are in trouble now or who may get in trouble. That is all that we expect to get. We haven't felt that the legislation which is in force at the present time was adequate, even if the bill was legal, that it was not adequate to cover the situation.

You have thirteen or fourteen communities under State control, but there are still probably thirty or forty others that are, some of them, in just as bad condition as these communities under the State control. I can cite Calais, for instance, one of our cities in terrible condition and nobody doing anything about it. Now some day the State is going to pay indirectly, and you might just as well look the situation in the face now before it gets too serious. That is all we hope to accomplish, is to place this matter before an unprejudiced body,

somebody that can bring it before the Legislature and get some legislation under way before the Legislature meets; because we tried two years ago to get legislation started, get somebody to take an interest in the thing, and couldn't do anything. It is too big a problem to start right out from scratch after the Legislature convenes and try to work out a solution. There has got to be a lot of groundwork done, and that is our ownly hope. We are not asking this legislative committee to intervene for us in any way, shape or manner. These facts we have brought out, we will stand by them, and any differences we have had with the Commission are between the Commission and ourselves, and we are not asking the Legislative Committee or the Commission for anything. We are all done with that. Does that cover the ground?

MR. WEBBER: Yes; that is a very fair statement of your position.

Do you as a citizen who has made more than the ordinary amount of study of this municipal problem, recommend to this committee that the Emergency Municipal Finance Commission be abolished?

MR. SMITH: No. I think we have got to have a commission of some sort. I believe that we have got some ideas on it. It would be too much to go into it now, but we have got to have some head in the state and it might be in the commission, but set the commission up so they have got some money to work with and some authority and so they can

go ahead and enforce their legislation without prejudice and do it without holding back and all this deception and so forth, and so they can do a job.

The commission, as we look at it, is an unworkable commission. I think we can point out that the commission up to the present time has accomplished nothing as far as Eastport is concerned, that they are just where they were five years ago when they started in.

Now they will have arguments on the other side, and I am not saying that to disparage any of the commission or any member of the commission -- we haven't anything against them at all -- but it is an unworkable proposition as it stands there now, and we ought to get a commission that would have some authority to go into these towns; and you have got to have some money, you can't do anything without money, you can see that. These fellows have built up a cash position now of \$100,000 and haven't got anywhere. You have still got to get rid of these obligations in some way, and there is no legislation that really gives them authority to compromise or do anything else. I think that is one of the reasons the commission has been so slow in making a decision: they don't want to do anything that would come back on them at some time in the future.

~~CHAIRMAN~~DOW: I have one question. Without any obligation on our part at all, you would be willing in the near future to send to our attorney some of your suggestions in writing, so that we might look them over as proposed legislation?

MR. SMITH: We would be glad to make some suggestions and would be glad to work along with somebody and help work out something. It is a pretty big problem from the legal standpoint. We have done an awful lot of work in putting out bond issues and so forth, and we know a lot about the legal points there, but as far as working up legislation we do not pretend to know anything about it: we are not lawyers, and I think this is the first cross-examination I have ever attended.

MR. WEBBER: You have done very well so far.

CHAIRMAN DOW: But you have got some ideas from a workability viewpoint.

MR. SMITH: Yes. First you have got a legislature you have got to put the bill through. There are certain things you can't do and certain things you can't talk too much about, and you have got to raise some money. Now in Portland, if you come right out and say "Let us appropriate a mill in taxation ---

CHAIRMAN DOW: The reason I asked that question is that under the law creating this committee we must make our final report thirty days before the Legislature comes in, which means we can hold but one more meeting sometime around the 30th of November, and if you can give us some ideas in writing before the committee meets again I think it might be of value to us.

MR. SMITH: Massachusetts and a good many of our other states have recognized this situation for a long time,

and they have a bill in Massachusetts -- I have a copy of it here -- that allows the cities and towns to borrow on tax titles. Now what has happened here, when one of our communities gets in trouble the State says, "You pay us 6 per cent: if you don't pay your taxes you pay 6 per cent on overdue taxes." Here is a money rate of one and a half per cent for short term money, but the State says "You pay us 6 per cent." Here is one of their own creatures that is in trouble. They come to us and say, "How much can you borrow tax money for?" We say, "Your credit is bad; you are way over your debt limit and probably you can't do anything." And the chances are we don't. So they work on a hand to mouth basis down there and they can't do anything and they get worse and worse as it goes along: unless someone comes along and bails them out they just get in deeper and deeper. In Massachusetts I think their rate now on tax titles is something like two per cent. There is a little bit more reason. The State can borrow money now at one per cent. There is not anybody in the Legislature that would criticize loaning on tax titles at two per cent probably. Those tax titles down there, they are not even transferred: all they do, as I understand it, they borrow on certain tax titles. That is just one place where you could probably get money and it wouldn't be actually costing the State any money.

CHAIRMAN DOW: If you would send some of this stuff to Mr. Webber I think we would be glad to have it.

MR. SMITH: I would be very glad to.

MR. WEBBER: Now I think we can proceed. You want to open this up, Jess, or do you want to have George open it?

MR. BURKETT: Whichever suits the Committee. I would like an opportunity sometime before you get through to tell the Committee what the situation is in Eastport and what steps have been taken to lead up to the present situation, not only in Eastport but in the thirteen other towns. I think, however, possibly it would be better if you cleaned up this present controversy between Mr. Smith and the board before we do that.

MR. WEBBER: I think that is perhaps right, and then we can get into the general problem afterwards. If Mr. Hill would fire the first gun.

MR. GEORGE HILL: Gentlemen of the Committee: I might preface my remarks by stating that in 1933 when the Emergency Municipal Finance law was first before the Legislature, first enacted, I was a member of the Legislature and a member of the Committee on Judiciary before which that bill came, and that the one possible objection that I saw in the bill was what seemed to me to be a possible danger of the State having once assumed control of these municipalities being reluctant or unwilling to relinquish it at the proper time. I therefore came to the board as a member of it and the Chairman of it in May, 1941 with a very decided feeling that when the proper time arose the State ought to restore local control of these municipalities.

I might also say that the whole tenor and nature of this State control or domination over local municipalities runs counter to my basic political philosophy and counter absolutely to the political philosophy of local self-government as it has existed for generations in the State of Maine and elsewhere in this country; therefore I was entirely anxious to see the affairs of the City of Eastport as well as any of these other communities worked out and restored to a sound financial basis at the earliest practicable and feasible and legal date. Therefore I began very soon after becoming the Chairman of the board to urge that some steps be taken in connection with the City of Eastport because that particular city seemed best adapted to work out a settlement.

We had many discussions on this subject long before I ever heard of the firm of Smith, White & Stanley. My first word in regard to Smith, White & Stanley came either from Mr. Burkett or Mr. Belmont Smith, I am not sure which, but one or the other of these two gentlemen informed me that they had talked with Mr. Smith at Waterville. I was not aware that they were to confer with him but was told that they had talked with him, that Mr. Smith had a proposal to submit to the board, that he desired an opportunity to appear before the board and to submit this proposal, and so of course the board said "Yes," and Mr. Smith was informed that we would be in session and glad to discuss the matter with him on a certain date.

Mr. Smith came down here to Augusta, and, as he has

related today, he then outlined various ideas that came to his mind, and we had a general discussion of ideas and plans that were already in the mind of the Committee.

That discussion that afternoon got nowhere. There are so many angles in this thing to be considered that we couldn't in one afternoon arrive at any conclusion on this proposition.

It was my impression from that very first conference with Mr. Smith that his attitude and method of procedure was that of a high-pressure salesman. He seemed to be anxious to sweep the Emergency Municipal Finance Board right off its feet in a rush and rush us into some plan he was in the process of devising at that time. The information that he had at his disposal was not correct in certain respects, as the board pointed out to him at the time. We gave him better information, we gave him a copy of the report of the State Department of Audit in respect to the City of Eastport, and Mr. Smith stated that he would return to Waterville, consider the matter further, and that he would then let us know if he had any proposal to make.

I think it was at that first conference that I asked him what the fee of his firm would be if they were asked to do anything about this, and he stated that it would be -- no, I am going to correct that -- I think it was at the

second conference that he stated the fee would be \$10,000. At any rate, Mr. Smith returned to Waterville, the board discussed the matter further after Smith had left, either on the same day or within a day or two. There was considerable doubt expressed in the board at that time as to whether if a compromise settlement were to be undertaken whether the board would be proceeding wisely in acting through any investment house or whether it might not be better handled by the board direct, presenting the matter to the bondholders and the other creditors as a matter submitted by the Board of Emergency Municipal Finance.

It was also suggested at that meeting that we ought not to take any step without further consultation with the citizens of Eastport, with some of the major creditors. Accordingly I went to Eastport for that purpose. I interviewed a substantial number of leading citizens of Eastport. I went to Bangor and discussed with creditors there, with creditors at Eastport and with bondholders at Waterville, the Waterville Savings Bank, discussed the matter with the trustees that were assembled in meeting; and I discussed it with the Bangor Hydro-Electric Company that was one of the creditors with an open account, and with counsel for the Eastport Water Company, which had a judgment that amounted with interest to nearly \$15,000. I believe the figures show somewhere that claim was \$13,000 and some odd dollars, but that was without the

interest, and I think the full amount of the judgment was between \$14,000 and \$15,000.

I returned from that trip and reported to the other members of the board that in the City of Eastport I found a difference of opinion among the citizens as to whether the board ought to undertake a settlement or as to whether or not it would be advisable for the board to continue for some time yet in control without making any settlement there. My impression was that the majority of those whom I interviewed were favorable toward a settlement of some sort.

In contacting the bondholders whom I did interview and other creditors it was made very clear and definite to them that the board was in no way submitting to them a proposal of settlement: I was simply there for the purpose of a preliminary discussion or interview to sound out the proposition as to whether or not there would be any possibility of their accepting a compromise settlement in the event one was proposed or suggested. I am sure that was made very clear everywhere.

I then returned to Augusta and the board considered the matter further at great length. We discussed it with the representative of the Attorney-General, Mr. Burkett, who was assigned to the board, we discussed it with the Attorney-General himself and with various other State officers, and it was suggested by Mr. Belmont Smith that the Commissioner of Finance, who had come into this

thing in this way -- and perhaps I should explain that -- the Commissioner of Finance, Mr. Paine, was called into one or two conferences on this matter as representing the State as a creditor of the City of Eastport. The Commissioner of Finance and the State Auditor have the authority under Chapter 13 of the Public Laws of 1941 to recommend charging off certain amounts, and it was from that angle only that Mr. Paine had been interested. However, it was suggested by Belmont Smith that it would be advisable for the board to contact some banking authorities at Boston on the general question for their advice, and the board felt that because of Mr. Paine's contacts with certain bankers and financial people in the City of Boston that it would be very helpful to our consideration of the entire problem if Mr. Paine consulted them. Accordingly, with the approval of the Governor, Mr. Paine went to Boston and returned and reported to us at Augusta.

Now the date of that may be of some significance, because it was, I think, in early March, or just after Mr. Donald Smith's last conference with us that Mr. Paine returned from Boston.

MR. WEBBER: March 11, 1942, to be exact.

MR. HILL: Thank you.

Mr. Hill reported to us that he had interviewed various prominent bankers in Boston who had been to him very emphatic in the opinion that it would be entirely wrong

for the State of Maine to compromise the debts of any city or municipality, that it would be disastrous to the credit not only of the particular municipality involved but of municipalities in the State of Maine in general.

Mr. Paine asked us in his memorandum, of which I think the Committee has a copy, to withhold any further action on this matter until he was able to make a further report or^a possible further suggestion.

Now at or about the same time Mr. Hayes was in Boston on other business~~s~~apart from the board and there contacted officials of the City of Boston, I think of the Commonwealth of Massachusetts, and I believe also some bankers -- Mr. Hayes can testify to that part of it. At any rate he brought back to us substantially the same report that Mr. Paine returned with, that this would be very harmful to the credit of Maine municipalities in general, that it would be considered as a repudiation of debt, and the angle we got from Massachusetts was that ought not to be undertaken.

Now that was one development that occurred between the time when Mr. Smith last conferred with the board and the time when he heard from us again later on. He says he does not know what was holding the thing up. That was one thing.

The board then having received those reports naturally desired to give very full consideration to the matter before

proceeding. We did so.

Mr. Paine in his memorandum intimated that he would have something further to propose a little later on. We waited for that, and, as I recall it, his proposal came orally, and it was a suggestion that emanated from bankers in Boston to the effect that the State of Maine ought to put money into these municipalities to bail them out rather than to have a compromised settlement. That opened up another whole, broad problem that would perhaps be somewhat of a digression for me to go into at this particular moment. Perhaps it is sufficient to say that the board considered that very carefully and very thoroughly. We came finally to the conclusion that because of the fact that there was no legislation that authorized the State of Maine putting funds into these municipalities, because of the fact that conditions at Eastport might become very much worse if the pending litigation went to an ultimate conclusion before anything was done, we seemed to be of the opinion that we had better make an effort to make a compromise settlement.

Now at the conference with Mr. Smith and Mr. Stanley, I want to emphasize this fact, I want to make this just as positive and emphatic as I know how, and that is that at no time did the Board of Emergency Municipal Finance give Mr. Smith or the firm of Smith, White & Stanley the slightest shadow of authority to proceed with

any plan of compromise settlement on behalf of the board, not the slightest shadow of authority, gentlemen. Mr. Smith and Mr. Stanley came down and made these proposals to us; we discussed them very fully with them, very fully with the Attorney General, with Mr. Burkett and Mr. Paine who were present. Mr. Smith tells you that the board was polled in his presence to ascertain whether or not the board would authorize his firm to proceed with some one of these various proposals that were being discussed. It never had occurred to me that the Board of Emergency Municipal Finance in dealing with so serious a problem as the settlement of the financial affairs of the City of Eastport would ever think of reaching any conclusion or taking any action or authorizing anybody to do anything except by a formal and official vote of the board. Now Mr. Smith says that I as Chairman polled the board. I have no doubt that I may have asked Mr. Belmont Smith and Mr. Hayes what they thought about the matter. I haven't the slightest doubt that I did, and I haven't the slightest doubt that all of us present, after full discussion, expressed a general sympathy toward working out a compromise settlement of the indebtedness of the City of Eastport, but that, gentlemen, is a very different thing from adopting a plan of settlement and authorizing an investment house to proceed in behalf of the board to put a certain plan into effect. Gentlemen, that never was done. Mr.

Smith came to us for this conference not as a bondholder, not as a creditor of the City of Eastport, he came to us as a member of an investment house in Waterville, desiring to be retained by the board to have his services engaged to put a plan into effect.

Mr. Smith returned to Waterville. As he says, he did not hear anything from the board. He has not told you the exact story according to my recollection for he says he heard nothing from the board for six weeks. The gentleman was in so much of a hurry that I think he scarcely let thirty-six hours go by before he called me on the telephone to know whether or not the board was going to authorize him to proceed. I informed him that the board had not decided to proceed, that other angles of the situation had arisen that were being considered, and that if and when the board decided to go ahead with any particular plan or if the board decided to employ Smith, White & Stanley they would be notified.

Well, Mr. Smith called me from Waterville not less than three times. I am being conservative. I should think it was more. He wanted to know whether or not we had so decided, and was told every time that the matter was still under consideration, that we had not so decided.

The next word that came to me -- I think I should mention this fact too, that in my conference with Edward F. Merrill, of Skowhegan, attorney for the Eastport Water Company, I was informed that the Eastport Water Company,

which had about nearly one-third of the claims outside of bonds and taxes, would absolutely refuse to accept any payment that was of a lower percentage than the percentage that was to be paid to the bondholders. Mr. Merrill stated that his client had recovered judgment, that he regarded his judgment as certainly entitled to equal treatment with the bondholders.

Then at about this time the board was having meetings frequently, going into this matter from every possible angle, and about this time the proposal was advanced that it would be both more equitable and more likely of success if a straight payment were made to all creditors and all were treated alike. It was figured out that there were funds sufficient, would be with the bond issue, to make a straight payment of 76 per cent all around. We discussed this matter at length with the Attorney General's representative, Mr. Burkett, and suggestion was made that Mr. Burkett would discuss the matter with Judge Powers, the special master. He did so and telephoned me that Judge Powers had some very strong ideas and opinions on the subject which he would like to express to the board. So we called a meeting and Judge Powers and Mr. Burkett came down to Augusta and spent all of one afternoon discussing this matter with the board. Judge Powers gave it as his opinion very definitely that the bondholders were entitled to no better treatment than anyone else: he expressed it as his opinion and advised that a 76 per cent

settlement all around would be much to be preferred over a settlement in which the bondholders were given a higher percentage than the other creditors. Judge Powers stated that in his opinion it was both a more equitable arrangement and also more likely of success.

After Judge Powers had left, after Mr. Burkett had left, and the others, the board considered the matter further again at great length, and finally on the 16th of April, 1942, the board for the first time adopted a plan of settlement for the City of Eastport, and that plan was carefully reduced to writing and is to be found in the records of the board. The Committee, I believe, has a copy under date of April 16th.

MR. WEBBER: "Voted unanimously that subject to approval as to its legality by Attorney General Cowan the following plan be and hereby is adopted for the proposal of a compromise settlement for the liabilities of City of Eastport as of December 23, 1937, to wit:

"All creditors whose claims have been duly filed with Herbert T. Powers, Esq, special master appointed by the Supreme Judicial Court in Equity in accordance with the orders and decrees of said court, including the tax claims of the State of Maine, County of Washington, bondholders and other creditors, shall receive 76 per cent of the principal amount of said claims without interest on the basis of the amounts so filed less any taxes or interest which may be due from any of said creditors

to the City of Eastport, if accepted by them in full and final settlement of said claims. Provided, however, there shall be excluded therefrom such claims or parts of claims as are ~~xxxxx~~ found to be illegal and void in the manner hereinafter set forth. Such payments shall be financed as follows: Serial bonds in the amount of fifty thousand dollars with final maturity not later than ten years from date bearing interest at three per cent per annum shall be issued by the City of Eastport. Three-fifths of said bonds or of any part thereof which are not converted into cash shall be accepted by the State of Maine at their par value in part payment of its share of said settlement, and two-fifths thereof shall in like manner be accepted by the County of Washington, The balance of the 76 per cent to be paid to said state and county together with all other payments to creditors shall be made in cash from funds now held by or for said city. Said settlement is estimated not to require funds in excess of \$135,000, including the amount of said bond issue. The special master shall be requested to prepare and submit to the Chairman of the Board a list of all bonds and all other claims of whatever nature which were duly filed with him in accordance with the order of court together with all information in his possession in relation thereto. The Attorney General or his representative shall then be requested to exclude from said list such claims as are in his opinion obviously invalid and to submit to the

board his recommendation showing a list of the claims to participate in this settlement, taking into account tax offsets provided and showing figure to be offered to each creditor on said 76 per cent basis, said list to be subject to final approval of the board.

Following approval of this plan by the Attorney General and the approval of such list by the board, and provided total of said demands shall be found not to exceed said sum of \$135,000, the Chairman of the board is authorized and instructed to present said proposal to the State of Maine as creditor. Upon written assurance of the Governor and the Commissioner of Finance to said Auditor and State Treasurer that said payment will be accepted by the State if agreed to by the other creditors as herein provided and that the balance of said claims of the State will be charged off the books of the State as provided in Chapter 13 of the Public Laws of 1941, the Chairman shall then in behalf of the board offer the amount set forth in said certified list to each of said creditors as provided herein. All offers of settlement to be made under the foregoing plan shall be contingent upon acceptance by the State of Maine, County of Washington, all of such bondholders and not less than 75 per cent in amount of such creditors."

MR. HILL: Now perhaps I have gotten a little ahead of myself, and let me go back to the last conference we had

with Smith, White & Stanley, which I believe was February 17th or thereabouts. Mr. Smith says he was authorized to do something or other by the board. I should like to read to you now a short paragraph from one letter which I think the committee has not on file. It is evidence which would not be admissible in the Law Court, I recognize that, but I should like to read that one paragraph as showing my understanding at the time, this letter having been written on March 4, 1942, in the motam litem, so to speak, to Mr. W. C. Beale, a citizen of Eastport. Just reading this one paragraph:

"Please be assured that the board has not yet arrived at any decision as to what course it will pursue in this matter, and while such decision is pending we are giving to the entire matter our earnest and sincere consideration."

Now that was written within a few days after Mr. Smith says he was authorized to settle the affairs of the City of Eastport.

About the 10th or 12th of April, I believe, and while we were in the midst of consideration of these matters and while we felt it was particularly important to maintain a delicate sense of balance with the bondholders and other creditors, I was contacted by certain bondholders who desired to know what the plan was that the board was submitting for settlement of the City of Eastport. They informed me that they had received a letter from Mr. Smith -- that was the letter that was read here this

morning -- that Mr. Smith said he sent to practically all of the bondholders of the City of Eastport.

Now coming as it did at that time, we felt very decidedly that Mr. Smith had gone much further than the circumstances warranted. We recognize the fact that Mr. Smith as well as any other individual has a perfect right to offer to buy a bond from a bondholder of the City of Eastport, but Mr. Smith's letter went much farther than that. Mr. Smith was presenting himself to us as someone, as I understood it, who wanted to work with us and for us and in cooperation with us to help us, for a fee, to work out the affairs of the City of Eastport, and it would be natural to presume if he were going to undertake that he would be expected to work along with us and at least to let us know what he was doing before he presents a whole plan of settlement to the bondholders of the city.

This letter, while it very carefully avoided any specific mention of the board of Emergency Municipal Finance by name, did embrace a full and complete plan of settlement of the city's affairs: it proposed payment ~~for~~ of so much for State taxes and so much on the county taxes and so much on open accounts and another percentage to the bondholders, and it proposed the issuance of bonds by the City of Eastport I believe, all of those things being things that could not be done except by vote and approval of the board. So, being a complete plan, it naturally carried to the bondholders the implication that

it was a plan being worked out for settlement and must have the backing of the board.

Now when I received that letter I talked with Mr. Smith about it, as he has said this morning, and he was good enough to come down here from Waterville to discuss the matter, and I pointed out to him that in my opinion it went much further than we had contemplated because we had not agreed on any plan. And so when the board was in session again on April 16th I read the letter to the board, and the following is from the record of the meeting as prepared by our Secretary, Mr. Hayes:

"The Chairman called the attention of the board to the fact that it had been learned that Smith, White & Stanley had written letters to certain at least of the creditors, offering them certain terms of settlement. The feeling of all members of the board was alike, that not only had this firm no authority to send out such a letter but that any settlement made with the creditors could best be handled directly by the board."

We had reached that conclusion, gentlemen, that any settlement in Eastport could best be handled by the board itself or through its agents, the Commissioner at Eastport and the attorney who represented the board.

Following that, the board adopted the 76 per cent proposal which has just been read to you by Mr. Webber. We went to work on that very earnestly. The first step was to submit that plan to the Attorney General, which was done

for his approval. Attorney General Cowan studied it at length and in a written opinion approved the legality of that proposal. Then as Chairman of the board I addressed a letter to Judge Powers and asked Judge Powers to assemble from the official information that was on file with him as Special Master the data that was necessary to work out the claims that would be accorded 76 per cent. Judge Powers did that, went over these claims, submitted them to Mr. Burkett, who, in accordance with the vote of the board, went over the claims further to eliminate those that were obviously illegal or clearly barred under the statute of limitations, and Mr. Burkett prepared a list of those claims that would be subject to the 76 per cent payment. That was done only after a great deal of effort and correspondence with Commissioner Ela in an attempt to work out certain tax offsets. The matter was finally presented to the board and the list of claims was approved by vote of the board.

At about this stage I received from Mr. Smith his letter, of which the committee has a copy, dated, I think, the 14th of May, proposing to sell these bonds at 80 per cent. That letter was submitted to the board and the board voted not to accept Mr. Smith's offer for several reasons. One reason was that we had very good reason to believe that Mr. Smith did not represent all of the bondholders, that he didn't control by any means all of

bonds of the City of Eastport and was not in a position to speak for them. Another reason why we didn't accept that proposal was that we had already definitely learned that if we paid 80 per cent to the bondholders we couldn't settle with the other creditors, because they would not accept fifty per cent -- some of them would not accept anything less than was offered to the bondholders, so that as a practical matter that appeared to eliminate the eighty per cent proposition which Mr. Smith advanced. Furthermore, as I said before, we had been strongly urged and advised by Judge Powers and by Mr. Burkett to make it a 76 per cent settlement all around.

Another factor that entered into it was the matter of the fee. The board discussed the fee, and members of the board expressed the opinion, myself included, that we would not be justified in using \$10,000 of the money of the Citizens of Eastport to pay Smith, White & Stanley. Mr. Smith says that the matter of the fee was never questioned. I differ with him on that. In my recollection, for I recall very distinctly talking with him over the telephone and telling him one of the things that was holding the matter up was the matter of that fee, that we didn't feel justified in paying such a fee.

Well, at the time of that letter of May 14th the board had a month previously adopted the 76 per cent proposal, we were working along on it, it was coming along well at the time, the Attorney General had approved it,

Judge Powers made his list and Mr. Burkett had gone over it and the thing was working along, therefore we were not in a position at that time to accept the proposal that was then made and we so informed Mr. Smith.

Now we proceeded to work on this 76 per cent settlement with some degree of success until early in June, I believe it was, when I was in Portland and chanced to meet in the lobby of the Congress Square Hotel Mr. Donald O. Smith of Waterville. Mr. Smith said to me that he understood that the board had some plan of its own for settlement of the City of Eastport, and I told him it had. "Well," he said, "you never will succeed, you never will be able to put it through." I said, "Why is that?" He said, "The bondholders will not accept." "How do you know that?" He said, "I know that because I or my firm are among the bondholders, we have gone out and bought or acquired bonds of the City of Eastport, and we are not going to listen to any proposal that comes from your board. If your board wants to accept our terms and adopt our plan and pay us our fee, all well and good: if you don't, we will accept nothing less than one hundred percent on the bonds, including interest."

Well, that didn't appear to me to be a very cooperative spirit. If I were to find any text in the discussion that took place here this morning that I thought would be applicable to the entire situation it would be in Mr. Smith's own language when he testified, as I recall his

exact words: "We don't give a **** about the City of Eastport.

Now, gentlemen, the board was concerned with the City of Eastport. Mr. Smith stated that not only would his concern as bondholders which it had now become refuse any plan except their own plan upon which they were to be retained for this fee but also unless the board accepted Mr. Smith's plan which involved this fee he was going to bring suit: he stated that he had already engaged counsel and would bring suit against the City of Eastport, that he as a bondholder would levy upon the property of the inhabitants of Eastport, that he would seize property, real and personal and create such a general furor among the inhabitants of Eastport that the board would be forced to adopt his plan.

Now, gentlemen, as I read the law it is my understanding that the control of the financial affairs of the City of Eastport, ^{whether} ~~was~~ wisely or unwisely, is at present vested in the State of Maine as represented by the Board of Emergency Municipal Finance. Mr. Smith's attitude has been such as to indicate that he reads that law as vesting the control of the City of Eastport in the hands of the firm of Smith, White & Stanley of Waterville. That has been his attitude throughout this entire matter.

I reported to the board Mr. Smith's conversation. I omitted one part of Mr. Smith's conversation. I am not sure it ought not to be presented to the committee, because

it is indicative of his friendly attitude toward the board. Mr. Smith told me there in the Congress Square Hotel, referring to conversation that he had with the State Auditor and a member of the board, that if Mr. Hayes was a younger man he would have smashed his **** face in.

MR. SMITH: I stand behind that. Anybody who insults me as I was insulted there would have to be a **** of a lot bigger than I before I would poke him."

MR. HILL: I am glad you corroborate my testimony on that.

MR. SMITH: I do that. May I put a question here?

MR. WEBBER: You will have a chance.

MR. HILL: Following my conversation in Portland with Mr. Smith I reported the substance of that conversation to the board at its next meeting and informed the board that Mr. Smith had indicated that it was impossible to get one hundred per cent concurrence of the bondholders. The plan as adopted required one hundred per cent agreement by the bondholders.

Another factor had arisen, and that was this: Pursuant to the vote setting forth the plan, as Chairman I had submitted to the State of Maine the proposal to compromise the claim of the State of Maine, and the State Treasurer Mr. Belmont Smith, had then submitted certain questions to the Attorney General. Although the Attorney General had previously in two memoranda to me indicated his approval

of the legality of the entire plan which involved the giving of certain bonds of the City of Eastport to the State of Maine, when the question was specifically submitted by the State Treasurer the Attorney General ruled otherwise and advised the State Treasurer that he was not authorized to accept bonds of the City of Eastport in part payment of the State tax; therefore it was obvious under that ruling that it was impossible to carry that plan legally into effect; so that, on account of that legal objection and also on account of the position taken by Mr. Smith, it was apparant that particular plan could not be put into effect, and so in June, I believe it was, the board voted to rescind that plan. The committee has a copy of the record on that point.

Following the rescission of that plan, the board passed a resolution which made clear the fact that the board was not abandoning its general purpose which still existed, to work out a settlement in Eastport. That is recorded in the minutes of the meeting.

And now reverting a little to some of Mr. Smith's testimony this morning, one point I would like to clear up is this: Mr. Smith spoke of the City of Eastport as having been in default on its bonds for eight years and referred to the board as having been unable to accomplish anything there during that period of eight years. In the first place, I believe it should be made clear to

the committee that the board did not assume control, did not come into control of the City of Eastport until the 23rd day of December, 1937, a little over four years. Now he says that during that period the board has accomplished nothing. It will be admitted, I think, that prior to the assumption of control by the State the city was unable to pay its current bills; creditors were stepping into Eastport and were levying on the property. The board went into operation, and from that time to the present the current obligations, apart from interest on bonds all other current obligations have been paid to date; the state taxes, the county taxes, and all current running expenses and bills have been paid to date, and at present, gentlemen, there is in the custody of the State Treasurer \$120,000 that has been accumulated under State control since December 23, 1937, nearly all of which or a large part of which is available for settlement with creditors. Of that \$120,000 \$11,000 is in the form of United States government bonds; the rest is in cash on deposit by the State Treasurer as trustee for the City of Eastport; so that I differ with my friend from Waterville when he says that the board has accomplished nothing during that period.

Now at the time that the board repealed the particular plan of April 16th I personally had come pretty much to the conclusion, pretty much to the opinion

that I still hold, that before a satisfactory settlement can be made with the City of Eastport further legislation will be necessary -- and I expressed that opinion in writing to the board at that time.

It seems to me that there are two possibilities in Eastport, and the same thing applies to other towns: one is a compromise settlement with the possible impairment of the credit of the municipalities; the other is a contribution of funds whether in the form of a loan or a grant or otherwise by the State of Maine. Well, now there you come to a question of broad policy of the State. It goes beyond, in my judgment, mere policy of administration by the board; it becomes a question of state policy, because it involves not only Eastport but it involves the twelve other municipalities under the board and other towns which may in the future be in just as bad condition as Eastport or Van Buren.

In Massachusetts there are only two municipalities, so far as I know, that have been under State control: one was the City of Fall River and the other is a little town called Millville which is a little smaller than the City of Eastport. In those cases the Commonwealth of Massachusetts did invest a considerable amount of money in those towns to pull them out. The bankers in Boston took the view that the State of Maine ought to do the same thing. Now personally I doubt that: I think the State should go very, very carefully in putting money in to

pay the debts of the City of Eastport or any other municipality for the reason you are establishing a precedent; you cannot draw the line at the boundary of Eastport, you have got to go on to these other towns, some of which are in worse shape than Eastport. There are other towns that I am sorry to say in my judgment are going to be in equally bad condition within a few years, towns that are not now under State control, and it is a question whether adopting such a policy as that would not get the State into very deep water before it could be carried through to a logical conclusion. I can see one motive, I believe, in some of the advice that comes from Boston. Some of these people are interested in the sale of Maine securities. If the State were to dump money into Eastport to pay the debts of Eastport, that, I assume, would be a very favorable thing to security salesmen in Massachusetts or elsewhere, because it would serve as a precedent. I suppose it would strengthen all Maine municipal securities, because the salesman of a municipal bond would be able to say, "This is a bond of a Maine municipality and when a Maine municipality gets into financial difficulties the State comes to its aid and the State will stand behind any municipal bond that is in danger of default." So I think that advice is not entirely free of some possibly selfish, legitimately selfish motives on the part of bond salesmen.

I think there is under the present law no clear or specific provision to the effect that the board may make compromise settlement. The powers of the board are broad, but there is no specific mention of a compromise settlement; there is no authority conferred upon the court to order a compromise settlement: the court is authorized only to determine the validity of claims against the city, not to go further and enforce a settlement after the validity has been determined.

Now my feeling is that the Legislature ought to decide whether a municipality in this condition is to be handled by means of a compromise settlement or whether the State is going to stand behind the municipalities for the sake of preserving municipal credit in general and put in some money. I think that is a broad question that the Legislature ought to decide.

Now there are certain other technical difficulties that stand in the way of settlement: one of them was mentioned this morning, and that was the apparent lack of authority on the part of the County Commissioners or anyone else to compromise the claim of the county for taxes. In all the research and investigation that has been made, so far as I know no one has been able to discover any statutory authority for the County Commissioners to wipe off any part of the county tax. Mr. Smith mentioned this morning that the State Tax Assessor has authority to

make abatements in certain cases. That is true, he has the power of abatement, but his power of abatement is limited to one year from the date of assessment, so that the State Tax Assessor could not abate more than the current year's taxes, which, for instance, in the City of Eastport case would not be sufficient even to work out his 80 per cent proposition on the county taxes. If you abated all of the current year's taxes still you would have more than 80 per cent of the claim left. You strike a snag there.

We have encountered other legal obstacles of a technical nature, and it is my opinion, as expressed to the board in June, that recommendation should be made to the incoming legislature for legislation on this subject that would clarify the manner in which the financial affairs were to be settled and to supplement the laws that now exist, clear up some of these difficulties and enable the board to work the matter out.

I am still very hopeful that the finances of the City of Eastport can be put on a sound basis and that control of the government of the City of Eastport may be restored to the citizens of Eastport, to whom it belongs, at the first opportunity.

Very likely I have overlooked some things that I wanted to mention. If there are any questions, I will be glad to answer them to the best of my ability, knowledge and belief.

MR. WEBBER: Mr. Hill, after the conference of February 17th had been completed what was your feeling and understanding with regard to Smith, White & Stanley? Did you anticipate that thereafter the board would continue to work with them in attempting to work out a plan, or had they apparently presented plans none of which were workable, none of which were acceptable, and, as far as you were concerned, they were a dead issue? Can we get clear as to whether they had anything to expect after that conference?

MR. HILL: My understanding was exactly this: that following that conference the board would consider whether or not it wished to adopt any plan that had been presented or might thereafter be presented by Smith, White & Stanley, and that the board would also consider the question of whether or not it felt it wise to handle the matter through an investment house. Those two questions were open with us. The firm of Smith, White & Stanley apparently realized that they had not been authorized to act, because they kept telephoning me from Waterville every few days after that to know when the board was going to decide what it wanted to do.

MR. WEBBER: Now let me ask you this question. Mr. Smith testified that he received a sort of an o.k. from Mr. Belmont Smith before sending out the letters of April 10th. Was that brought to your attention in any way, or brought to the attention of the board?

MR. HILL: That never came to my attention nor to the attention of the board until it came from the bondholders who had received a letter.

MR. WEBBER: Well, I meant in particular as to whether it came to your attention that Mr. Belmont Smith, a member of the board, had given him some what might be construed as authority to go ahead on the letter.

MR. HILL: No, it didn't. And at the time I called to the attention of the board in meeting the letter that had been sent out. Mr. Belmont Smith himself, as well as Mr. Hayes, expressed the opinion that Smith, White & Stanley were not authorized to submit a plan to the bondholders. That was my understanding at that time and I find it was so recorded at the time in the records of the meeting by Mr. Hayes, the Secretary.

MR. WEBBER: Let me ask you this question and then I think I am through: What effect do you feel there has been upon the workability of the Emergency Finance Commission law caused by the decision making a part of the act unconstitutional? In other words, has that disrupted what you might be otherwise able to do or can you function reasonably well in spite of that loss of that part of the act?

MR. HILL: During the time that I have been a member of the board we have had no difficulty resulting from that, although of course I can foresee that there may be great difficulty at some time. If one of these matters in the

Eastport case or the Van Buren case goes through to a final decision by the Law Court and the Law Court ultimately finally adjudicates the amount of the city's indebtedness, then I assume suits might be brought and great difficulty arise unless the board is then in a position to settle in some manner. I think Mr. Burkett, who was connected with this matter long before I was, could probably tell the board there was difficulty along back arising from that decision, that it was only with great effort that the board and Mr. Burkett succeeded in persuading creditors in some instances not to bring suits against the city; but there has been no difficulty of that kind since I have been on the board.

MR. PAYSON: George, as Mr. Smith says, "To****with Eastport" -- would you care to develop the proposition of the State stepping into this helping out of towns? May I suggest this: If the State should exercise a certain amount of preventive control over towns not within the board that are bankrupt now but towns that in the future may become so -- would you care to go into that proposition?

MR. HILL: Yes; I might comment a little on that. I might say we have made some investigations as to the manner in which the Commonwealth of Massachusetts has dealt with a somewhat similar problem and the manner in which the State of New Jersey has dealt with it, and, wholly apart from state control of financially embarrassed municipalities, both Massachusetts and New Jersey and many other states

exercise a much more rigid control over all municipalities than we do here in the State of Maine. Here in this State our municipalities are comparatively free from State control. In Massachusetts the tax rates have to be approved by the Commissioner of Corporations and Taxation; in New Jersey a municipality cannot issue a bond or borrow any money or enter into any other substantial financial transaction without the approval of the State government. Here I think if the State were to exercise more control in certain respects, much as I fundamentally dislike it, it would probably be of value to the finances of some of these communities.

I think we are confronted with two major difficulties: one is the economic condition that obtains in a certain part of our State, which was very, very serious as you all know, up along the St. John valley and down in Eastport. I do not feel that condition is confined to those particular regions: I think it exists in a marked degree in a certain area that embraces the southern part of Aroostook County and the northern part of Washington County and the ^{northeast} portion of Penobscot County where industries have vanished, where people have left the farms and where conditions are such there is just not the economic basis for the continued existence in a prosperous condition of some of these communities. And now it has extended down into Calais, where conditions are very, very bad, not that they have become bad that it has been brought to the board for the

State to step in and assume control in Calais as yet, but there are very many localities in ~~which~~ the State of Maine that unless there is some change I cannot foresee that are going to continue to decline. I think that economic factor is one thing, and then I think there is also the factor of bad local management in some of these localities. There is the fact that the State already is requiring municipalities to raise so much money for certain undertakings. There are cases where a municipality if left by itself, if it didn't have to come up to certain standards set by the State, could reduce its taxes and could probably survive, but with the burdens imposed by the State it is becoming impossible for some of these towns to meet them. Our whole structure of government has now assumed so many functions, has gone so far in certain socialistic trends that the burden has just become too great for some of these poorer municipalities.

MR. PAYSON: Getting away from that economic proposition which we cannot touch anyway, there are possibilities of swapping State help for some State control, the same as the federal government does with us: that is if the State can have some ^{supervision} ~~control~~ over the financing of municipalities they might be willing to assume some responsibility for their financial obligations?

MR. HILL: That I suppose is true. If the State were to assist any of these towns in meeting their obligations, I

should suppose the State would want to acquire or retain some degree of control more than they have over the ordinary municipality at present.

MR. PAYSON: I am not talking about these bankrupt towns, I am talking about the future, a preventive proposition.

MR. HILL: Yes, I understand that. Any of these other towns, if the State is going to put money into those towns -- perhaps you don't mean putting in any money, but simply exercise control as a preventive measure?

MR. PAYSON: I do: that is exactly it.

MR. HILL: That is being done in other states to a far greater degree than we do it here.

MR. WEBBER: Now we can give Mr. Smith an opportunity to ask questions.

MR. DOW: Mr. Smith, will you confine yourself to questions and answers, so we can get to all these other people?

MR. DONALD SMITH: There are several things we disagree on: the question of whether we had any authority or not, apparently we will never agree on that.

MR. WEBBER: We have the evidence on both sides.

MR. SMITH: But there is a statement here Mr. Hill made about down in Portland. He says I said that we owned some bonds and controlled enough so that we would force the board to adopt our plan. I never made any mention of forcing the board to adopt our plan. The statement I made was we own bonds and control bonds. We never have made any statement to the board of the amount of bonds we control;

and we don't make it now or intend to make it, but we do control some bonds; whether they believe it or don't believe it is another question. But the reason we made that statement is because if this plan does not go through of ours we are still working for the bondholders and our other agreement which we have will become retroactive, the agreement we have to collect as much as we can for the bondholders and we get 15 per cent on it. That was cancelled only on the assumption this plan went through. We didn't make any statement about forcing the State to adopt our plan. We cannot force them to do anything; I realize that.

MR. HILL: May I speak with reference to that now? I will agree with what Mr. Smith says to this extent: I will agree to this, that Mr. Smith at Portland probably didn't use the word "force". I agree to that. But when he said that this other plan would not go through because they wouldn't consent, I then asked him the specific question as to whether or not he was indicating to me that the firm of Smith, White & Stanley would block any other proposal than the one they had advanced and he said that was exactly what he meant.

MR. SMITH: That covers the ground pretty well. There wasn't any word "force." What we arrived at, we would go back to our original proposition to the bondholders and collect as much money as we could from the bondholders of

the City of Eastport.

MR. HILL: Also I asked Mr. Smith at Portland, for the information of the board, if he would tell me how many bonds they owned or controlled, and he said, "No, I will not give you that information." I think you will agree with that, you definitely declined to tell us how many bonds you held?

MR. SMITH: Yes. We will stand by that. We have given all the information we can to the board, and, as far as I can see, it has not helped us any.

MR. WEBBER: Mr. Smith, you are of course not the witness, but as long as you have raised the point, wouldn't it be a fair statement that you proposed a plan, the exact details of which were never worked out apparently -- everybody seems to agree to that -- but they roughly call for one per cent interest, somewhere around 80 per cent of bonds, and a substantially lower percentage to unsecured creditors, which proposal, for both practical and legal reasons, has since proved to be unworkable -- I refer to the attitude of some of the unsecured creditors and the legal difficulty of county abatement.

MR. SMITH: I do not think you can say it is unworkable, because you can do an awful lot of things that look impossible. I could sit here all the afternoon and tell you about communities that we have refinanced and the Boston lawyers and the Boston bankers and everybody else said it was impossible to do. All you have got to do is look over

Waterville if you want to study the situation.

MR. WEBBER: Perhaps I am basing my assumption on the knowledge of Mr. Ned Merrill.

MR. SMITH: That is something that might come up, and I do not believe the board could state our plan could not go through because of this or because of that, because we never were given a chance to put it through.

MR. WEBBER: Mr. Smith, don't we all agree here -- perhaps the Boston bankers don't agree with us -- but don't we agree here by and large it would be for the best interests of everybody if a compromise could be worked out? I am not trying to argue with you, but let me ask you this: Do you think it is entirely fair to use the blocker which you have, and which everyone recognizes you legally own and have a right to, to stop any proposed settlement except one which seems to have very definite legal and practical difficulties in its way? Do you think that is fair? Is it a position you want to be in as an investment man interested in municipalities of the State of Maine?

MR. SMITH: Yes, under the circumstances. We have taken that stand with our eyes wide open. Here we present a plan to the board; apparently there is no dissension; the thing is never questioned, and we work along a month or two and nothing is said; then we come up to a point where one little decision is waiting, and I believe the question was whether they should go along on some plan as suggested there. Now we come up to that point, and the question was

asked in that meeting -- Mr. Hill, did you ask us the question of whether or not we would purchase \$50,000 of City of Eastport bonds?

MR. HILL: No. I probably asked you what your plan contemplated, whether under your plan you proposed to purchase these bonds or whether you proposed to go out and sell them to the public. I didn't ask you to buy them.

MR. SMITH: You will recall there was some discussion as to whether the state and the county could take bonds or would take bonds?

MR. HILL: Well, I don't know as I can identify the particular occasion. That has been discussed. Very likely it was.

MR. SMITH: At any rate, in that meeting we did take the definite stand, and we carried a liability for six weeks. I don't know whether you gentlemen realize just what that means or not, but that was one devil of a liability to carry in such times as these. We agreed to purchase \$50,000 of bonds of the City of Eastport, and the reason we were so impatient was because we had that liability. We wanted to get out of the liability, but we never were given any chance to get out of it. That is our position in this: they have one side and we another, and there is a misunderstanding in between, that is all, quite a misunderstanding. We told them right in that meeting, "We will hold our organization ready to start this thing. You fellows agree it should be done immediately.

We will hold our organization ready to go on this." And we did for six weeks. I ask you gentlemen whether or not, in view of what has happened since then and in view of the money we spent on the City of Eastport, what would you say on bonds that you owned and controlled? Would you say, "Sure, I will take 76 per cent on them." I wouldn't. I don't believe your plan is for the best interests of the State of Maine. The only difference between them is a small percentage which doesn't amount to anything. We do not care whether it is 76 or 80. The only other question is the question of the \$10,000 fee we stuck in there and which we believe we are entitled to, and that is a very small fee for settling the affairs of the City of Eastport, and I think before the Commission gets through with it they will agree it would be a very small fee.

MR. WEBBER: Have you other questions of Mr. Hill?

MR. SMITH: I would like to ask Mr. Hill how much the taxes in the City of Eastport have been raised since the board took it over?

MR. HILL: I wouldn't dare to give you that figure without consulting my book. I have it on my desk.

MR. SMITH: Mr. Hayes, you probably recall that the tax rate has, since the board has been in operation, at one time been over one hundred mills. It is ninety-two now, isn't it?

MR. HILL: I will tell you this: the valuation has been reduced.

MR. SMITH: Who does that benefit, or who does it hurt? The State really loses slightly, does it not?

MR. HILL: The State valuation was reduced by my predecessor, yes. Of course conditions have been such there as to require a reduction.

MR. SMITH: Don't you figure this situation is costing the State of Maine indirectly: whether you can see it in black and white or not, it is still there?

MR. HILL: The economic situation at Eastport is costing the State of Maine because of the depreciation in values of property at Eastport, yes.

MR. SMITH: Has there been considerable PWA money and other money put into Eastport, probably more than in other communities which are not under State control?

MR. HILL: Well, there has been money put into Eastport, PWA.

MR. SMITH: I think it would surprise any member of the Committee to know the amount of money that has gone into Eastport in the last few years by PWA. The reason I am bringing this point out is that for five years here this city has been under State control, practically five years now, December 23rd., and it is costing the State a lot of money. Your accrued interest is running up around \$10,000 a year now. These fellows have accumulated \$120,000. The accrued interest in that time has been running along and

your tax rate has been raised -- I think it was 57 mills, and it was raised once over 100 mills and I think last year it was 90 mills. This board has not saved any money in Eastport: all they have done is taken a few of the best taxpayers in Eastport and tacked a very high rate on them and made them pay. They might as well have gone down and asked them to contribute the money.

MR. HILL: I do not think I can subscribe to that statement. Whether the tax rate has been increased or not by itself does not indicate the amount of money that has been raised in the City of Eastport. The valuation has been lowered because of economic conditions. The valuation of the City of Eastport was substantially reduced a few years ago. Valuations in various municipalities have been reduced when the economic situation was such as to warrant it. With a reduction in valuation naturally comes a corresponding increase in rate if the same amount of money is raised.

MR. SMITH: Do you feel the credit of the City of Eastport has been improved since the board took it over?

MR. HILL: I feel that the financial standing of the City of Eastport is very much better since the State took it over. At the time the State did take over the City of Eastport, while I have no personal knowledge of it, it is my understanding there was practically a condition of financial chaos there which would undoubtedly have been much worse if the State had not taken it over.

MR. SMITH: Don't you feel now the question of chaos is just a question of time, and you are right in it again after your Master's report is filed?

MR. HILL: I think that would undoubtedly be true if all the creditors of the City of Eastport took the same position you take, yes.

MR. SMITH: I think probably they will. They are still just human beings. When you try to make a comparison of what has happened in Massachusetts, in Fall River, and compare it with Eastport, there just isn't any comparison; there is no way to compare them. We have 15 bondholders and you can contact those, but Fall River couldn't contact the bondholders and get them together. The only reason we can work this out is because the creditors are very few and we can get them together easily.

I would like to ask one more question: Is some sort of a compromise being worked out in Van Buren?

MR. HILL: No; the board has taken no action other than to make some exploration of possibilities there.

MR. SMITH: Do you have any recollection compromises were proposed by your predecessor in office, Mr. Holley?

MR. HILL: No. I think there was a case of a compromise of an individual claim of substantial proportions by my predecessor in Van Buren, but I know of no general compromise.

MR. SMITH: You wouldn't have any knowledge that the town of Danforth was asked to compromise a bill of around

two or three thousand dollars that Wytopotlock owed at fifty cents on a dollar, and were told if they didn't accept fifty pents on a dollar it would probably be years of litigation before they got anything?

MR. HILL: You are talking about Van Buren or Wytopotlock?

MR. SMITH: I have switched to Danforth.

MR. HILL: A claim of the town of Danforth against Reed Plantation?

MR. SMITH: Against Wytopotlock.

MR. HILL: Wytopotlock is in Reed Plantation. No; I have no personal knowledge or recollection of that particular claim. I do know in some cases in Reed Plantation there have been some compromises of individual accounts: I know nothing of the claims of the town of Danforth.

MR. WEBBER: It seems to me that is rather off the point.

MR. SMITH: The only reason I am bringing that up: this commission has gone to Boston, two men have talked to Boston bankers and others regarding the question of whether or not a compromise should or could be put through, and at the same time the Commission has already been making compromises. That is the only reason I bring the point out: compromises have been made in the past and are being made now.

MR. HILL: You don't know of any case in which the entire indebtedness of any municipality under the control of the State has been compromised?

MR. SMITH: I could cite an instance which I wouldn't care to

publicize, of the town of Patten. Do you happen to be aware of that situation?

MR. HILL: The town of Patten is not under the control of the State or the Board of Emergency Municipal Finance. You are getting now into another matter I would be glad to discuss with you if the Committee wants to go into side issues.

MR. SMITH: As a matter of fact, the town of Patten had outstanding bonds and they were way over their debt limit. The town is now within its debt limit, and we put through a proposition which is exactly the same or a similar proposition to what has been proposed here. The State owned some of the bonds.

MR. STANLEY: I had just one or two points -- I wont bring them up in their chronological order; but when Mr. Hill was going over the matter of how much easier it would be for the bond men of Massachusetts to sell State of Maine bonds with the State of Maine practically guaranteeing the loans, he is absolutely right, it would be easier; but I think that perhaps unintentionally he gave the impression that it would be to the great benefit of the bondholders -- and that is why the houses give it that way -- but please do not overlook the fact it would be to the benefit of the interest rate paid by the State of Maine and municipalities, because you can sell anything at a price -- State of Maine bonds coming out at one and a half instead of four, there wouldn't be any trouble in selling them.

I do not suppose it is necessary for me to bring this up, but if my memory is at all correct, and if this is permissible, Mr. Webber, I would like to ask that you as attorney for the committee would read with great care at some time Mr. Smith's testimony this morning, and certain statements which I can't remember where Mr. Hill has stated that Mr. Smith has said certain things which will be clearly outlined when you read the evidence.

MR. WEBBER: In other words, what you are indicating is that there is a sharp conflict of testimony on certain points. I think we are quite aware of that, Mr. Stanley.

MR. STANLEY: May I bring out just one more point, this business of the thirty-six hours after the February 17th meeting and telephone calls, to me that is a question of memory evidently with Mr. Hill and members of the board as well as myself.

MR. WEBBER: That is a matter of personal recollection.

MR. STANLEY: But I would like also to say and to go on record as a member of the firm that it was at least ten days before anything was said, and I think three will definitely cover the calls, and I do not recall the three.

MR. HILL: I might add, all telephone conversations to which I referred were conversations with Mr. Smith, not Mr. Stanley.

CHAIRMAN DOW: I would just like to make one statement to sum up this evidence in about five sentences on points where

you do agree. One is by your testimony and Mr. Smith's -- you both testify you want to see a workable law?

MR. HILL: Yes; I agree with some of the things Mr. Smith said on the matter of legislation.

CHAIRMAN DOW: So as to have a workable law, possibly embracing not only towns in trouble but towns about to be involved in trouble. Also, he agrees you don't owe him any money, and you agree on that?

MR. HILL: We agree on that.

MR. WEBBER: And they agree that as long as Mr. Smith and Mr. Stanley own those bonds and are not in a mood to accept any proposition of compromise except their proposed plan, that no matter how many times the legislature may amend or strengthen the law there will still be no compromise of the affairs of the City of Eastport? Is that a fair statement?

MR. SMITH: Yes. But I would like to bring out a point: One of the reasons we will not accept a proposition from the Commission where they are trying to put it through is because they are not going to improve the credit of the City of Eastport or any other municipality; they are going to injure it the minute they step in there as a Commission and try to compromise. There is an awful big difference between an investment firm compromising these obligations and the Commission which is running the City of Eastport; from a credit standpoint there is all the difference in the world.

MR. STANLEY: This is a point I think Mr. Hill brought up when he said the bankers of the State of Massachusetts and the City of Boston said it was not feasible for the Commission to do it. We told them that first day when we met with them that it was not feasible for the Commission to compromise.

MR. HILL: I beg to differ a little on that, Mr. Stanley. Our advice from Boston was it would be a disastrous thing to do, whether the action were taken by the Commission or whether it was purely voluntary, consisting only of the purchase of bonds by the City of Eastport or by the board, that the result would be the same in either case.

MR. WEBBER: The feeling in Boston was it should be one hundred cents on a dollar?

MR. HILL: In any event.

I think it would be of assistance to the committee to hear testimony of the other members of the board that were present at the conversation with Mr. Smith and Mr. Stanley: Mr. Hayes and Mr. Belmont Smith; and I think it would also be of assistance to the committee if Judge Powers would testify concerning his conferences with the board.

MR. SMITH: May I ask Mr. Burkett a question?

MR. WEBBER: Wait a minute. Let us see if we cannot proceed in good order. I am sure you will have an opportunity.

(Brief recess)

MR. WEBBER: I wonder, Mr. Chairman, if we cannot expedite matters, because we all want to get through this afternoon, if in calling on these other gentlemen we simply take a statement from them that they corroborate Mr. Hill, if they do, and then offer any supplementary material that occurs to them?

CHAIRMAN DOW: With the exception of Judge Powers.

JUDGE POWERS: I will agree to be brief.

MR. WEBBER; We will assume that these gentlemen for the most part will corroborate Mr. Hill, and there is no point in going all over the same story again: the committee, I think, has it very well in mind at the present time, so I make that suggestion. Wouldn't your evidence, Belmont, and yours, Mr. Hayes, substantiate what Mr. Hill has said?

MR. BELMONT SMITH: That is right.

I would like to add in regard to that letter that Mr. Smith sent out that he called me and asked me if it would be all right to send out an offer to pay so much for the bonds. I certainly did agree with that; but as far as making a compromise settlement, that is another matter. I guess Mr. Smith will substantiate that.

MR. DONALD SMITH: Yes.

MR. BELMONT SMITH: In connection with that, I will say as State Treasurer probably not a week goes by but I get one or a dozen letters, offers to buy bonds, and also on compromise settlements. Any of you gentlemen that will bring me in \$8000 on those \$10,000 bonds any time between now

and January 1st., I will recommend to the Governor that it be accepted.

Also, may I clear up in regard to Mr. Holley -- Mr. Smith made the statement he couldn't get any information from Mr. Holley. We had no information. There were all kinds of rumors in regard to Eastport. We had an auditor down there, Mr. Hatch, who was a former state auditor. We thought he was going to be there about three months. Instead of that it was two years and a half before we got rid of him, and the only audit we got was from Mr. Hayes' department as of January 1, 1941. Is that right?

MR. HAYES: You have had it every January 1st.

MR. BELMONT SMITH: That is the only reported audit we could give out real information on. And I also think Mr. Holley and myself have never refused to allow anybody to know about the situation of Eastport as far as we knew it. There were a lot of things we didn't know. Do I make myself clear on that?

MR. WEBBER: That is pretty much ancient history. If I have got it straight in my own mind, the current policy of the present board is to get information and insist that Mr. Ela give information. Is that correct, Mr. Hill?

MR. HILL: The records will show in 1941, very soon after I took office, a vote was unanimously passed and recorded by the board establishing it as the policy of the board that full information be made available to all citizens and

all creditors and to other persons who had a legitimate interest in the city's business, and that is and has been the policy of the board ever since my connection with it.

MR. HAYES: May I add one more word supplementing what Mr. Hill has said: At no time did I know of any vote of the board or acceptance informally by the board of Smith and Stanley until the final vote was passed turning down the last proposition they put up. When Mr. Smith came down there first, my understanding was he came there at his own request as a salesman to sell a proposition to us. He sent word to others he had a proposition to put up to us, and he came in a way to sell a proposition to us.

In regard to February 17th., I have no memory of the polling of the members of the board that Mr. Smith spoke of, and there is certainly no record of it, and at no time have I had any knowledge, directly or indirectly, that Smith, White & Stanley were given any right to proceed in the matter. And the conference between Mr. Smith and myself, which has been spoken of once or twice, in the lobby of the Augusta House, at which George Peabody was present, was a case where Mr. Peabody and Mr. Smith came out of the dining room and came to where I sat in the lobby and we entered into conversation. Mr. Smith made the statement he was acting under authorization of the board, and I told him in my opinion he was not, and he didn't like it. That was the subject of the famous conference.

MR. WEBBER: I do not think that type of thing, although of

course it is bound to come into discussion, will help us much with the future of the City of Eastport, so we will make as little of it as we possibly can.

Now are there any questions by the Committee of either Mr. Belmont Smith or Mr. Hayes before we leave them?

CHAIRMAN DOW: Any questions of either of these two gentlemen?

MR. PAYSON: I should like to have Mr. Hayes express any ideas he has in regard to any remedial legislation, not necessarily with respect to Eastport but with respect to bankrupt towns and future bankrupt towns.

MR. HAYES: I have come to the feeling, from working on municipal audit work in the State and seeing audit reports of all municipalities going over my desk, that there are quite a number of towns and possibly one or two cities in the State of Maine that simply cannot ever work themselves out from their present situation because of the points that Mr. Hill raised: simply lost tax-raising possibility. Most of those, I think, if they could get rid of their past-incurred indebtedness in some way, could; and I am theoretically in favor, whenever it is practicable, of either a compromise settlement of debts, which will be something along the same basic principles as bankruptcy provided in commercial business or assignment to creditors, or the State has got to step in in some way directly or indirectly. The policy in Massachusetts is for the State to stand behind and step in, but here we have got no

policy either way. I agree with Mr. Hill that the present law does not certainly give any right for the State to step in. I am not talking about Eastport: I am talking about the other municipalities. There is a strong question in my mind whether the present law definitely allows a compromise settlement. The feeling was universal in Massachusetts in official headquarters -- there was one very slight error in Mr. Hill's testimony: I did not contact any of the financial people in Massachusetts; I confined myself entirely to state and city officials there, and one of the towns that is under the municipal board there, and the universal feeling I got from the officials and the universal feeling Fred Paine got from financial headquarters there was the terrific black mark from every standpoint if there was any repudiation of public debts. I said, "It is not repudiation, it is a compromise settlement." They said, "It amounts to the same thing. Any compromise settlement of the public debts of a municipality is repudiation." And Paine got the same thing from people he interviewed. I couldn't agree with it, because to me they seem entirely different, but there they said it would absolutely undermine the financial structure of municipalities in Maine. The larger cities, probably five places in Maine which are A-1 credit risks today, they said even they would have to pay one-half per cent or a quarter per cent more for their loans: if we ever did anything like that it would result in raising the interest rates

municipalities would pay and possibly even the State would pay; and they put up the proposition that the State could afford to invest up to half a million dollars in sick municipalities and make money on it over the amount they would have to pay for interest if they put over such a thing as this. In that I think my feeling and Mr. Smith's agree a good deal. I think it is a big problem before the Legislature, what line the State of Maine will take in the future.

Of course we in Maine have a problem entirely different than Massachusetts, and I think a bigger one and most generally spread over the State. I am going to say there are thirty to fifty municipalities in the State of Maine that it will be nip and tuck whether they can ever pull out from under, and some of them assuredly cannot get out from under without scaling down of their debts or State assistance.

The municipalities that have come under the board have paid their way currently with the exception of interest on bonds and state taxes; they have paid their way currently and accumulated some money against past debts. In other words, it has been proved these municipalities can live currently if they can get out from under the back load; but there are very few of the thirteen we have and a lot that we don't have that I do not think ever can get off the back load -- do you, Mr. Hill?

MR. HILL: I think that is a very fair statement, and my views coincide with that, as to the inability of certain of our municipalities, both under the board and outside of board control, to pay off their debts without one or the other of two things: either a compromise of their indebtedness or assistance from the State. I think it must be one or the other.

MR. HAYES: There is one other point that indirectly comes into this that I alone can speak of better than other people in the room.

The Commissioner of Finance and the State Auditor are given certain rights by Chapter 13 of the Public Laws of 1941 to certify to the Controller accounts receivable in favor of the State of Maine to be scaled down or wiped off when approved by the Governor. There has been only one case where we have used that right in connection with a municipality, and that involved only a scaling down of the interest on the State tax. It was only done after forcing the county to take the same action in regard to interest on the county tax. That was done by Mr. Paine and myself back before Jim Mossman came in as Finance Commissioner. We have both been inclined to regret our action in that regard, and the policy of the present Finance Commissioner and the State Auditor is to materially question whether the intent of Chapter 13 of the Laws of 1941 ever intended a scale-down of debts

owed the State of Maine by municipalities, certainly as applies to taxes. We shall certainly be very loath indeed, at least until the law is changed or a new law put through, to put up to the Governor any write-down of debts owed by municipalities to the State of Maine. We have turned down probably ten cases during the last summer where they wanted to get out from under. In some of the cases municipalities were well able to pay their debts, and we religiously turned case after case down.

This noon when I was at my desk downstairs, a long schedule of figures from one of the municipalities of the State of Maine came in where they wanted their debts scaled down. I didn't get a chance to read it through. It is a matter that has been up before and we have turned it down once.

That is covered in the State Auditor's report, which I hope will be out sometime. Before putting it in there I went over to Jim Mossman, and what is said there represents the view of both of us, that we will be very loath to certify to the Governor debts of any municipality for scaling down; and I think it is very questionable under that law whether we could ever have scaled this down: we certainly would not have passed a 76 per cent flat settlement.

MR. WEBBER: Well, Mr. Hayes, didn't you as a member of

the Commission vote for 76 per cent?

MR. HAYES: I voted for 76 per cent from the standpoint of the Commission because there were two votes against me and I might just as well. The records will show I was consistently at every meeting opposed to the 76 per cent.

MR. BELMONT SMITH: Wasn't that vote unanimous?

MR. HAYES: It was unanimous in the end.

MR. HILL: It might be noted there that the records or correspondence show that the Attorney General has ruled that the Commissioner of Finance and the State Auditor do have that authority with respect to the principal as well as the interest on taxes.

MR. WEBBER: Any other questions of Mr. Smith or Mr. Hayes? If not, these two gentlemen from Eastport, or from the county anyway, do they have anything to suggest to us that may be helpful -- Mr. Beckett or Mr. Vose?

MR. BECKETT: As a resident of Eastport, I would like to differ with Mr. Donald Smith on the statement that the Emergency Board had not accomplished anything in five years in Eastport, because I think the people down there are very well satisfied with what they have done and feel they have done a very good job. There didn't seem to be anybody to defend the board, so I would like to bring that up.

When they took us over down there, there was a political upset there which had rather a bad odor, and we got into pretty deep trouble. They think so much of the

board -- I think I can make the statement that they really prefer, if the settlement of the affairs of Eastport terminated control by the board they would prefer to have it carry along and the board keep control rather than to have it go back to the old regime that handled it.

MR. WEBBER: Mr. Beckett, you are a resident of Eastport?

MR. BECKETT: Yes.

MR. WEBBER: And you are County Commissioner of Washington County?

MR. WEBBER: Yes. And also with regard to the county in the abatement of county tax, I never could find where the Board of County Commissioners had any authority to scale down the tax, and Mr. Smith's suggestion of abatement of the present current tax does not appeal to me, as the County of Washington, like other counties in the State, has not any surplus money. We owe more than any other county in the State, and we have to work entirely on a budget, and to take even the tax of Eastport for the current year away from the County by abatement would seriously upset the finances of the County.

MR. WEBBER: Mr. Vose, have you anything to suggest?

MR. VOSE: I might add that I agree with Mr. Beckett in that the citizens in Eastport are entirely satisfied -- that is the majority of them, the property owners and the heavy taxpayers are in agreement that they would

prefer the board stay there, and that the present management has been sound and efficient. I have discussed with some of these people informally, without any authority, in regard to a compromise settlement, and they do feel that perhaps the citizens themselves would be interested in raising some money for it, but only on condition that they have some assurance from the State that that present management or one as efficient would continue.

MR. WEBBER: In other words, Mr. Vose, you don't trust local self-government in Eastport?

MR. VOSE: I didn't say I didn't.

(Off record discussion)

MR. DONALD SMITH: I think the point has been brought out rather subtly whether it was because of the good work of the board or because they were afraid to go back to their own government.

I was recently in Boston, and a certain man has been down there from Eastport canvassing Boston municipal houses to find out if they would consider buying some City of Eastport bonds, and he represented himself, as I understand it, to be the Mayor of the City of Eastport.

I would like to ask Mr. Beckett how much the county tax of the City of Eastport is.

MR. BECKETT: I think it is \$4900.

MR. SMITH: And would it disrupt your budget too much if you were to get the payment of all of the back taxes?

MR. BECKETT: That is obligated on a back county debt. That is set up as debt retirement on back county debt, and it should not be used to run the county for the current year.

MR. FRANZ U. BURKETT: When this Emergency Municipal Finance Board was set up back in 1933, it was apparent then there was, just as explained today, a lot of cities and towns in Maine that could not ever work out of their situation.

I have got a little computation I made day before yesterday, showing the condition of some of the thirteen towns that we have got. Just as an illustration -- I wont try to give them all -- but the town of Connor, a small place between Caribou and Van Buren, with a borrowing capacity or debt limit of \$7500, owes, according to the report of the Master \$56,600. Now that is the worst of them all. The town of Kingman, in Penobscot County, the only one we have in that county, with a debt limit of \$4300, owes \$42,000. Now that is 50 per cent or more of the present valuation. In the town of Connor, if all the real and personal property of the town of Connor was sold, assuming it is all free and clear of mortgages, which of course is not true, a capital levy made in that town would not pay off its present debt.

Van Buren, with a \$50,000 limit, owes \$180,000. Fort Kent, with \$62,000 borrowing capacity, owes \$130,000; and Eastport, as has been explained, with a \$50,000 borrowing

capacity, owes \$208,000 according to the Master's report.

At the time the board was first enacted into law, it was apparent that something had to be done to save some of these communities from utter financial chaos. The act was first passed in 1933, was amended in 1935, and no action taken under it until 1937, when we started taking over the first towns. We didn't take over any towns then until the creditors had secured judgment against them and were in those towns levying upon real and personal property. In the town of Blaine somebody got judgment and went in and took the automobiles of the first and second selectmen and applied it to the debt, and they have never been repaid. One in Van Buren took a stock of drugs out of a drugstore. They went into Kingman and, after having got judgment, levied on twelve of the farms in Kingman, practically all of which were mortgaged to the Federal Land Bank. The Eastern Trust and Banking Company took those farms and sold them and in many cases people had to move off.

But it was the idea of the board, back of the time Mr. Hill and Mr. Hayes came on it, that what the board could accomplish in these communities was to go in and take over the administration of affairs, stop all these suits and judgments, stop the waste and extravagance that was obviously occurring in these towns, try and give them efficient management, tax them a little extra so that they

could build up a fund to be ultimately used for debt retirement, with the hope that after two or three years of that type of management the people of these communities would pull themselves together, cast out the people who had been getting them into difficulties, and take hold of the situation themselves and help work out a compromise settlement of their affairs.

It is not any use, of course, to talk in the town of Connor, with that problem facing us, of only two methods of settlement: one a compromise settlement with creditors, which would be at most 7 per cent, or some method of the State stepping in with a fund and bailing them out and perhaps keeping control until they had paid back what the State put in. A fair conception of what that would amount to if the State should pass legislation appropriating money to pay off the debts of these towns is furnished by the totals of these figures. In these thirteen towns with a total borrowing capacity of \$276,000 it will take \$874,000 to pay off their debts, which is one mill on the State tax rate. That runs into real money.

Without going into a discussion of the relative merits of a compromise settlement and payment by the State, which is a debatable question but which I think the Committee ought, sometime before it makes its report, to seriously consider, and which I would be very glad to

discuss with you, I do not believe that the people of Portland or South Portland or Norway or any of the towns you gentlemen represent would be willing to come down here to that legislature and assess their communities an extra mill for the purpose of paying off these bills. If that was going to be done, I would conceive it could be done only after a very strong agitation here in the legislature, and someone would have to be a supersalesman in order to get it through.

So, to my mind, in spite of the fact the credit of the State might be hurt by this compromise settlement, I believe it is the only practical thing to do. As I say, the board has changed, but all the time I have had anything to do with it, which is since it started, it has been my considered opinion that ultimately in all these towns we would get to a point where the only possible alternative was a settlement with the creditors.

You know how the thing operates: the board comes in, has audits made in an attempt to find out what the true debt is, and then brings a bill in equity against all the known creditors of the community. There are eight of these pending now in various stages of progress. A Master is appointed. Judge Powers has acted as Master. He collects in all the claims, the same as a Master would in receivership and makes a report.

Now if the matter is left to drift along until all the legal questions are determined of the validity of any

particular debt, the equity court has done everything it can for that community.

To get back to Eastport: Judge Powers' report, which he has filed and which is now pending for acceptance, shows that he has allowed in Eastport some \$150,000 about which there can be no possible controversy as to legality. He has disallowed some \$48,000 worth of claims about which there might be a question and which ultimately will have to go to the Law Court for decision. But let us stick to Eastport, because we have all been talking about it. If nothing is done to settle the claims of Eastport and the equity proceedings go through and every claim that Judge Powers has disallowed is finally disallowed, Eastport still owes \$155,000 plus perhaps two years' more interest on top of that. So I conceive that the only way to get rid of that situation, get the State out of there -- and any legislation you can think of now don't help the situation of these towns very much -- is for a compromise settlement of these debts. It seems to me it is one of the "must" things, if there is any such thing in the world, is to make a settlement with the creditors of Eastport.

As has been explained, we had a borrowing capacity of \$50,000, we had \$85,000 in cash at that time. That would furnish a fund of \$135,000, which was 76 per cent of \$208,000, which was the total debt which the Judge had

proved before him. And as we discussed these various plans of settlement, 80, 50, 90, or what not, and a good many that were suggested, we all ultimately came to the conclusion -- I know Judge Powers and I did, and I think the board as shown by its vote was convinced that the best method of working out the affairs of Eastport was to pay everybody the same percentage. I know Mr. Hayes has just stated that his board, operating under Chapter 13, as far as he is concerned he would be reluctant to mark down the State tax. Of course if his board is unwilling to do that and we cannot buy the bonds for 76 per cent, a settlement is difficult if not impossible.

I do not want to argue with Mr. Hayes, but I think the State of Maine would be a good deal better off if in facing the situation in Eastport they took over eight or ten thousand of accumulated taxes and got that community cleaned out so that the people could pay its running expenses as they have demonstrated they could do under efficient management.

MR. HAYES: I am not disagreeing with that statement, but the feeling of Paine and I is that is beyond our province under that law.

MR. BURKETT: You asked the Attorney General about that and he said under that present law you did have authority to scale down taxes. Be that as it may, we do not want to take up the time of the Committee on that.

This is true: that in these fourteen towns the thing

that has caused their difficulty more than anything else is failure to collect taxes. In those fourteen towns owing \$874,000 there are enough uncollected taxes over a ten-year period to pay all their debt and leave them a nice fund to operate on if they were collected. And that is where the State has failed in treating with towns, which under our law are simply creatures of the State, having only powers and duties delegated to them by the State and no more. That is where the State has fallen down in its supervision over these communities, in not having stricter control over the tax situation, and it has cost the State hundreds of thousands of dollars to let that condition prevail.

Go up into any one of these towns, or any one of the smaller towns of the State -- Belmont Smith and I had an experience in Smyrna Mills a little while ago that demonstrated this situation to me. The town puts out the collection of taxes to bids in most instances and a man bids it in for one or two or three per cent. The Supreme Court of Maine has said that the lien law is constitutional. Before that he knew pretty well that it was. He collected a percentage on the taxes committed to him. He didn't care particularly whether he collected them in cash or filed liens, because he got his money in any event, and, as a result, he collected taxes from people right around in his immediate neighborhood or people he didn't like, but the great mass of his cousins

or relatives all over town, he let them go and filed liens and the town paid him his five per cent and he got his discharge on his bond and that was the end of it.

In these fourteen towns I know there are enough uncollected taxes, most of them uncollectible because of poor commitment, the statute of limitations, and bad sales, that are not collected, to pay this entire debt. I suggest that is something, if the Committee is going to suggest something to the next Legislature, that they ought to consider closer supervision over collection of taxes. I think perhaps the State ought to step in in some way and have control over tax collection in these towns. Anyway, they ought to stop paying tax collectors a percentage on taxes they don't collect but simply lien.

To get back to Eastport: we seem to be stymied on making a settlement with Eastport, first, because of the attitude Mr. Smith has taken, I am not going to say whether justified or not -- you have got all the facts and can decide -- and again by the reluctance of Mr. Hayes and his board to take advantage of the powers they have been given under Chapter 13 of the Laws of 1941 to scale down the State's obligations. I do not know there is very much we can do about it, but I am going to continue working on it, as I have for a couple of years, to see if some way cannot be worked out. I know in my own mind if Mr. Smith would say he would take 76 per cent on the bonds he controls and the State would say they would take

76 per cent on their obligations, and I can work a little scheme with Mr. Beckett and show him how he can take 76 per cent on the county taxes and keep within the law, that every single one of the other creditors of Eastport would take 76 per cent and be satisfied, and Eastport, in spite of what the Boston bankers say, could continue to be a credit to the State as it was prior to the time it got out of Mr. Beckett's control and got into the control of another gang down there. If it was Eastport alone, probably it wouldn't be so complicated, but if you settle Eastport how about these other towns? Can you conceive of Eastport appropriating \$60,000 to pay off the debt of Connor? And if you pay off Connor you have got to pay the rest of them. That is almost a million dollars with accumulated interest. So you get back to the necessity of making some compromise settlement not only with Eastport but with these other towns. If Mr. Smith and Mr. Hayes would agree, and Mr. Beckett would agree to scale down taxes, we could do it.

When we come to Connor, we have got to go up there and offer them seven per cent: we can't possibly pay them any more, because there is no money to do it, unless you people decide you want to be philanthropists and go to the Legislature and create a fund. But I would hate to be a member of the Legislature that titled that law if I wanted to go anywhere in politics in the State of Maine.

Of course it is true Massachusetts has a scheme of taking liens on taxes and loaning money to towns and pulling them out. New Jersey has got a different scheme: they have got a virtual Federal Bankruptcy Act in the state. The town of Asbury Park was in bankruptcy. There is a decision in the case of some iron or steel company against Asbury Park, a decision recently reported in the advance sheets, that says that is a constitutional provision and upheld it. But you pass an equivalent statute to that in Maine and put these towns through bankruptcy, and every banker in New England will tell you that the credit of the State of Maine is immeasurably harmed, the minute you start in publicly passing statutes recognizing the fact that some poor towns and cities cannot continue and you have got to put them through bankruptcy, then there is no doubt in my mind that the position of these Boston bankers is sound, that the credit of the State is harmed, and it is going to be a lot more difficult for the State and the City of Portland and some well-conducted cities and towns to borrow money at these advantageous rates. But if you took the City of Eastport and right here in this room we could settle up its affairs and everybody take 76 per cent and go home and give the city a receipt, even if somebody had to stretch a few technical points of law in order to do it, it would save Eastport not peanuts but \$50,000, because if you make a settlement down there for \$135,000 you have saved \$30,000 on the claims that are

absolutely valid, and everyone knows they are valid, and the possibility of \$48,000 more which are in litigation. I cannot see any other alternative except making settlement with these communities. I welcome this opportunity to come before this board to see if somebody in his wisdom cannot suggest some method of doing it.

As far as these other towns are concerned right on the verge of trouble, I will agree with Mr. Hayes there are probably fifty of them. There is another 150 in the State that are probably over their debt limit today but are still operating all right, but I think there ought to be some legislation for more strict control. I think the Legislature made an awful mistake when it tinkered with the compulsory audit law a year ago and took the teeth out of that. We ought to have an official in Maine who had authority to supervise these towns, to have some control over their borrowings and expenditures, and when they reach a certain percentage of their valuation have authority to stop them and perhaps step in and run them for a while and get rid of the gang that is raping them. The easiest way is for everybody to pull together and cut some corners if necessary, but do it quietly so there is no publicity. Do not have legislation, and do not do too much advertising about it, but go down and settle with the creditors of the town just as you have finally got to settle with the creditors of Connor, and let them

start over again.

As I say, sometime I would like to talk with you about proposed legislation, but I do not think that meets this problem: I do not think you can wait until the Legislature comes in and take a chance any law you pass might not go into effect until next July. I do not think the creditors in these communities are going to sit by that long. If I was a creditor of Eastport and had for five years been held off by the board on the promise they were getting somewhere and would ultimately settle, and if I go through the whole legal proceeding and the Master files his report, and it has been found I have got a valid claim on my \$500 bond or ten dollars for a cord of wood I sold them, I should probably feel like taking steps to collect. The problem in Eastport is the immediate problem of the best possible settlement with creditors.

MR. HAYES: May I say a word there? In order to be sure the record is clear, I want to call attention again to the fact that when I said the feeling in Massachusetts was that a compromise settlement was in the nature of repudiation and would injure the credit standing of all the towns in the State of Maine, I was quoting other people. Personally, I do not think it would hurt the credit of towns and cities in the State of Maine any more if as much as the rotten credit situation or rotten financial situation at the present time. On the same theory,

a man goes through bankruptcy or goes through assignment and comes out with his creditors taking a licking, but he gets on his feet and can go ahead: it doesn't hurt his credit as much as to keep on not paying bills. I am personally strongly in favor of a compromise settlement, and I believe the effect on the whole financial structure in the State of Maine would be improved over what it is the way we are dragging on some of these thirteen towns and the way other towns as bad or worse are dragging their situation on.

One other point that has not been mentioned: With all due respect to the Master's reports, and looking ahead towards possible decision of the Law Court on the validity of these claims, from a practical standpoint they are deciding, Judge Powers has decided and the Law Court probably will decide the only way they can under the straight legality of various claims.

There is a question in my mind -- and I have heard it voiced by other people -- whether in effect a possible repudiation of the public debts of these municipalities on the technical point of exceeding the debt limit may not have almost as bad an effect as some other things that we all cuss at, and possibly a worse effect than to go ahead on a compromise settlement. I would like to hear from Judge Powers on that. I am not criticizing his findings a particle, or the findings the Law Court will

make, because they have got to decide on technical and legal grounds, but it is purely technical. To take one definite case and name names: The Town of Kingman owes me \$300 for an audit bill, back I don't know how many years ago. I didn't bother to look it up: Judge Powers probably disallowed that on some grounds and is absolutely right in law in doing it; but that was an absolutely equitable bill and they owed it to me in equity, and it is repudiation of a public debt. I am not kicking, because I crossed it off my books years ago: I am simply taking that as an example of what I mean. I think there is a possibility that the net result of reports and findings by the Law Court may have the effect of the very thing John Smith and I want to avoid, a detrimental effect on the credit situation in Maine. It may have a worse effect than a compromise settlement.

I quoted the people of Massachusetts. One person whom I cannot quote but in whose judgment I have a great deal of faith, and whose knowledge of the situation in Maine is large and sound, has argued with me very strongly on the point a compromise settlement would not be as bad as the present situation is by a good deal and has poo-pooed the effect on credit of a compromise settlement. Because I believe in it so thoroughly, I have quoted him in some of the things he said as my own.

MR. WEBBER: Did I understand, Mr. Hayes, that the Attorney-General gave one opinion on the validity of scaling

down debts and then later gave a different opinion on the same subject matter?

MR. HAYES: I have no memory of his ever having given a definite opinion that the taxes themselves were to be included under that.

MR. HILL: May I say on that, Mr. Webber, that when the 76 per cent plan was under consideration and under discussion by the board, that definitely and necessarily involved a reduction of Eastport's indebtedness to the State of Maine, including a debt on taxes. That matter came up for discussion at that time and the Attorney General was sent for in order to get his opinion as to whether or not the Commissioner of Finance and the State Auditor, acting under Chapter 13 of the Laws of 1941, could charge off a part of the State's claim for taxes. That was discussed at this meeting. I think Mr. Hayes withdrew possibly from the meeting temporarily before that point was fully discussed, but the Attorney General did conclude and expressed the opinion very definitely they did have authority under that law to make such a reduction in the State tax. Later the entire plan was submitted to the Attorney General in writing -- the vote that was passed on April 16th, which the Attorney General then considered from all angles and the legality of which he approved in writing twice. The plan of course involved a reduction by the State in the State tax, so that is what I referred to

when I said it had been approved by the Attorney General.

MR. HAYES: The Finance Commissioner and the State Auditor have had in mind, but have not as yet done it, taking up from their own angle -- not referring to Eastport or any other place -- but taking up that very point with the Attorney General and getting a ruling from him on that, because that question is liable to come to us. As I say, there is only one case where we scaled down the debt of a municipality, and in that case we took two-thirds off of the interest on the State tax.

(Off record discussion)

MR. WEBBER: I would like to get this clear. As I see it, it would be fine if we could settle the troubles of the City of Eastport: we would perform a real service if we did. The obstacles seem to be Mr. Merrill, who would not be an obstacle if he thought he was getting as much as the bondholders; Mr. Smith, who has expressed his reluctance to taking anything different than his proposed plan; Mr. Beckett and the county, which might be ironed out in some ingenious manner; and Mr. Hayes, who has some reluctance in recommending 76 per cent flat. Now to get down to cases: Mr. Hayes, what is the difficulty with the Attorney General's ruling as far as you are concerned? Don't you think it is good law, or are you afraid he will change his mind?

MR. HAYES: Answering your question: I would like to see

a definite ruling from the Attorney General covering one specific point, whether Chapter 13 does allow scaling down of State taxes.

MR. WEBBER: If that was provided to your satisfaction, would you then feel free to recommend a 76 per cent settlement of the State tax, if the Commissioner of Finance also came to the same opinion?

MR. HAYES: The feeling at the present time of the Commissioner of Finance and the State Auditor is that Chapter 13 was never intended to make gifts to towns. You will have to acknowledge at law those things are collectible. Chapter 13 uses the term "impracticable of realization" not "impossible of realization."

MR. HILL: Mr. Hayes has asked for an opinion in writing from the Attorney General on that specific point. I have it here. The whole plan was submitted to the Attorney General, and he writes as follows: "I have studied the proposal for closing up the affairs of the City of Eastport in the Emergency Municipal Board as appears in vote passed April 16, 1942, which you placed in my hands this morning. The proposed method is within the provisions of Chapter 13 of the Public Laws of 1941 providing for the charging off of uncollectible accounts and meets with the approval of this department. (Signed) Frank I. Cowan, Attorney General."

MR. HAYES: You have covered the point.

MR. WEBBER: Would you be willing to accept his legal opinion?

MR. HAYES: I would like to discuss it with my sidekick.

MR. WEBBER: Mr. Smith, are there any circumstances under which you would be willing to consider a 76 per cent flat settlement?

MR. DONALD SMITH: I think there might be. I think everyone in this room will agree, whether we were authorized or not authorized we brought to a head an important problem in the State of Maine, and it may save the State of Maine considerable money.

Now Mr. Burkett and Mr. Hayes have brought out some points we didn't cover because we thought it might take too long. But it is very important to the State of Maine to get this thing cleaned up. We still believe that there should be an intermediary in this: we still believe because of the work we have done on this that we should be allowed to continue. We have put in seven years on this, and I think Mr. Burkett brought out the point that if he was owed an obligation by the City of Eastport and the Master's report was about ready to be filed he would take steps to collect it.

MR. BURKETT: I said after the Master's report had gone through ---

MR. DONALD SMITH: It is apparently pretty close to solution. We have got a lot of money invested in this Eastport situation and we believe we should be paid for it. Possibly \$10,000 is not the right fee, but it is pretty close to it, and I think if you talked with any investment dealers you would get that agreement. The

only way we would agree to go through on this is to follow this thing through: we would work in cooperation with the Commission, they would help us in every way possible and help us distribute some bonds, and we could go ahead and work this thing out in a friendly manner and we would get paid for working it out. I think this Committee and I think the Commission will agree we have done enough work on this so that we should have something for what we have done. I think it will save the City of Eastport a considerable amount of money as well as the State of Maine. Somebody has still got to go around: there is still going to be the expense to go around and contact these men. We have already contacted some and know what we can do with them, and we have already contacted a number of accounts payable.

MR. WEBBER: I will tell you what I think, Mr. Smith -- and I am not even a voting member of the committee; I am just its attorney, so my opinion isn't their own -- I think that regardless of the merits on either side, from the point of view of settling the affairs of the City of Eastport and perhaps moving on to other more important difficult situations, your stalemate that you have established, regardless of how you have established it, is worth something to buy.

MR. DONALD SMITH: We would not like to stop just with Eastport but would like to go ahead and work out these other

communities. If we are hired to do the job on the City of Eastport, then we can go ahead, and if it is not as much of a job as anticipated it will make a difference. But somebody has got to take a liability on these bonds, whether it is the State of Maine or the County of Washington. Now if they take a liability, that eliminates quite an item: but I do not believe they should take a liability as far as that goes. The City of Eastport bonds, in order to re-establish their credit, they should gradually get out in the hands of the public. That is why we have tried to keep away from publicity on this thing, handle it just as quietly as possible. Regardless of what these Boston houses say, we know it is commonsense that if this situation is cleared up we can go to them with the statement that the City of Eastport is all clear, Eastport owing \$50,000 in bonds, serial issues, so many bonds payable each year, and with the rest of their slate entirely clear and within their debt limit. It may be two or three or four years, but we will eventually unload those bonds and get them onto the market.

MR. PAYSON: Mr. Hill, didn't you say the Attorney had ruled that the State could not take those bonds as part of the plan?

MR. HILL: Couldn't take bonds to apply on taxes.

MR. WEBBER: Wouldn't it be helpful to the 76 per cent settlement if the firm of Smith, White & Stanley did purchase \$50,000 of bonds and you had the cash to use?

MR. HILL: If they purchased new bonds of the City of Eastport.

MR. WEBBER; I assume that is what they are talking about.

MR. HILL: Why, yes, if it is determined that a compromise settlement will be possible and our plan involves the city presumably necessarily would issue new bonds, undoubtedly it would be advantageous to be able to sell those bonds, whether to Smith, White & Stanley or anybody else.

MR. POULIN: That is a prerequisite to settlement, isn't it?

MR. BURKETT: I have been working with Mr. Vose on another proposition which contemplated the people of Eastport raising \$25,000 or \$30,000 and instead of having a new issue of bonds to go out and buy those old ones at 76 and mark them down. That has been done in other cases in the State recently. I think the people of Eastport would look upon that with some favor.

MR. DONALD SMITH; You still haven't helped the credit.

MR. BURKETT: Except for the fact they fear, as Mr. Vose and Mr. Beckett have said, the return of the city to its old management. In fact, one of the representative citizens of Eastport says, "What is the sense of us saving \$50,000 down there on the Eastport debt:if that old gang is going to come back next year they will waste \$50,000 in one year." That is just a little sideline on the spectacle down there, and it is bad. That is regrettable, of course, but that is what they say.

MR. HAYES: Isn't it true there is quite a considerable feeling among citizens of Eastport of hesitancy to work for any kind of compromise settlement if as a by-product of that the board steps out of Eastport. Of course the policy of the board, which I am heartily in favor of, is that the board should step out of every municipality as soon as it can.

MR. BURKETT: Mr. Hill and I have had some interesting discussions about the benefits of local self-government as opposed to State control, and about the only thing we have differed on is this: It is my considered opinion, strengthened here today by things which have been said about new legislation -- here we have this afternoon been spending considerable time discussing the necessity of some more direct control by the State over municipalities, possibly creation of another board that will have the right to go into a town when it begins to slip and take it over and run it until it gets back on its feet -- so I do not see any objection to the Emergency Municipal Finance Board staying down in Eastport four or five years.

MR. WEBBER: Let me ask this: Legally can they stay?

MR. BURKETT: If I had a copy of it here I would read it to you.

MR. HAYES: It doesn't say they shall give it up at any time.

MR. BURKETT: I am reading from Section 8 of the Act: "Said board shall continue in charge of the government and

financial affairs of said city, town or plantation until such time as its taxes to the state or loans made therefor or expenses or obligations incurred by said commissioner or commissioners or the Board of Emergency Municipal Finance shall have been paid and until in the opinion of the commissioner or commissioners of the Emergency Municipal Finance Board the affairs of said city, town or plantation may be resumed under local control."

Now the ideal situation as far as Eastport is concerned -- before George has a chance to expound his theories on local self-government -- would be, in my opinion, some method of settlement which would tie the State in in some way, perhaps to take some bonds or some notes or something of the City of Eastport, with the understanding they were going to stay in there until those obligations had been paid.

MR. PAYSON: You mean stay in until somebody dies?

MR. BURKETT: It is not costing the State anything to operate the City of Eastport other than the time and trouble of this board and what little they pay me, which would be eliminated if this thing were worked out. It is taking a little of Mr. Hill's time, a lot of his time -- but he doesn't have anything else to do. It is one of the most interesting experiments in government ever worked out in this State, and George is bearing up under it. But I honestly believe if you are going to try to remedy conditions in a city where the temper and spirit of the people is as bad

as it is in the City of Eastport -- and I think Mr. Vose and Mr. Beckett will bear me out that that condition does exist in Eastport -- where you have got a situation like that, having in mind Eastport is nothing but a chartered agency of the State and they have been worked into a condition by their former governmental agencies where they have not paid their state and county tax, where their schoolteachers are unpaid, where there is utter chaos -- you will find that to be a fact -- that the State is justified under its general powers in going into that town and staying there until conditions are remedied.

MR. FOULIN: I just want to ask one question to get it clear in my mind: Do I understand you to say that because of the attitude of the people in Eastport it is best that the State of Maine have control over the City of Eastport?

MR. BURKETT: I do not have any doubt about it. You agree with me?

MR. VOSE: Yes, I do.

MR. BECKETT: Yes.

MR. FOULIN: I am just trying to get your opinion clarified in my own mind. I should assume -- this is just my personal opinion -- that irrespective of how the citizens of Eastport felt that it should be the policy of the State to let go control over certain municipalities as soon as they can.

MR. BURKETT: I agree with you -- up to the time it is safe to let go. Where you have got a condition -- I don't care

whether it is Eastport or in Van Buren, Connor, Kingman, which has been wrecked by one of the selectmen -- if you have got a condition like that where the State is suffering for lack of collection of taxes, the State is justified in going in.

MR. POULIN: I do not question the State is justified in going in, but I question whether the State is justified in staying there.

MR. BURKETT: Until under the act it is safe to turn over affairs to local control.

MR. POULIN: Yes; but I understand you are considering the attitude of the Citizens of Eastport.

MR. BURKETT: I should stay there until I was satisfied there had been enough public sentiment for good government.

MR. HILDRETH: Or until the State had power to go in with preventive measures.

MR. BURKETT: I am not a member of the board, but I do not think the State would be justified in letting go of the government of Kingman, Connor or Blaine or any of these towns if they were satisfied that if they turned them back it would result in the same chaos as when we went in there.

MR. HILL: Brother Burkett has indicated I might choose to debate with him on this issue. I might say I am not going to take the time of the Committee to go into any extended debate at this juncture; but there are two different thoughts on it that are not to be confused: One is a matter

of legislative policy that is for the Legislature to decide, as to whether it is desirable for the board to remain in control after a sound financial condition has been restored, and the other is the question of administrative procedure under the law which we already have. Now if the Legislature sees fit to amend the law so as to more clearly to state that the board shall remain in control for three years or five years or whatever time is thought desirable after a settlement, all well and good, we will undertake to carry out the law; but under the law as it now reads I personally do not concur in Mr. Burkett's interpretation. In the first place, we must bear in mind this law was a drastic departure from anything that was ever obtained in the State of Maine in regard to local government. In the second place, the purposes of the act and the purposes for which the board was created are specifically set forth in Section 2 of the act, which states those purposes to be the restoration of the municipality to a sound financial condition and the payment of the State taxes. Now once those purposes have been accomplished I doubt very much whether any court would say we were justified in retaining control of that municipality, after a sound financial condition had been restored and the State taxes paid. And that section that Mr. Burkett quoted from says: "Until in the opinion of the Commissioner or the Emergency Municipal Finance Board the financial affairs of said city,

town or plantation may be resumed under local control."

Now that perhaps is a question of law, but my personal opinion is the Court would construe that power very narrowly as being in derogation of the common law and the established procedure in Maine, if we were to continue for an indefinite period after the financial condition of the city had been restored. I think if you gentlemen feel it is wise for the State to remain in control for a substantial length of time after such settlement you ought to make it clear in the law.

It would seem to me it would be of interest to the Committee and helpful to the Committee if Judge Powers is willing to review to the Committee the opinions that he expressed to this board shortly before we adopted our plan of April 16th.

MR. WEBBER: I think that is the thing to do now.

JUDGE HERBERT T. POWERS: I will be brief.

I came over here, as Mr. Hill has stated, at the request of the board. At that time, apparently, in the minds of the Commission there was some doubt as to what policy they would adopt in relation to attempting to negotiate a settlement. They were agreed, as I understood it, on the fact they should, if possible, arrive at some adjustment, and there was a question as to the percentages to be paid various classes of claims.

Perhaps I was at that time more familiar with the claims against the town than the Commission, because I had

had them filed and was going over them commencing to prepare my report. It seemed to me, and I so suggested to the Commission, that there was no special sanctity attached to a bond over another debt, that if these debts were honest obligations of the city and were to be paid I could see no reason why one citizen should not have as big a percentage of his claim as another. I did not view it, I confess, from the point of view of a financier or a bond dealer but, as it seemed to me, a simple matter of justice, that two creditors of equal standing legally should receive the same treatment.

Further, there was a suggestion that a smaller percentage be paid on some claims -- the two largest claims other than those of the State and the County, one of which was the Eastport Water Company and the other the Bangor Hydro-Electric Company. Those were two public service corporations who, ever since 1932, had been furnishing essential public service to the City of Eastport. They had received some money on account but there had at all times ever since 1932 been a substantial balance due them for the service that these utilities had supplied. I felt very confident at the time from my conversations with Mr. Merrill, who has been referred to, that so far as his \$15,000 claim was concerned you would never get a settlement with him unless you paid him an amount equal at least to that received by the bondholders, and I have

no doubt that is true of the Bangor Hydro-Electric, which had a claim of four to five thousand dollars. Mr. Merrill's claim, with accrued interest, amounted to roughly \$15,000. There is \$20,000 which would be required to reach a settlement as a practical proposition that you have got to pay an equal amount to what you pay other creditors. That left only a comparatively small number of creditors when you had taken out claims which were obviously barred by the statute of limitations.

I will say as far as Mr. Hayes' claim was concerned, it was disallowed: it was clearly barred by the statute of limitations.

Now those were the suggestions which I made to the board so far as I can recall them briefly. We discussed the matter more or less and I came away. The board did not come to any definite conclusion in my presence, and that is practically all the information I have about the matter. I do not know anything about negotiations with Smith's firm or anything else.

I would call your attention to this situation: Mr. Burkett has given you amounts of the various towns, their indebtedness and the amount of their debt limit under the Constitution. Now there is a very important question which is raised as to which there is no decision in the State of Maine and which involves a very large amount in these various communities, less in the City of Eastport

in proportion to its size than any of the others, and that is the question which the Law Court must settle if it is to be settled, as to the authority of municipal officers to contract debts of any kind of description the town being indebted to an amount equal or in excess of its constitutional debt limit at the time the debt is contracted.

Now I have acted as Master in four of these towns: The City of Eastport, the town of Connor, the town of Blaine, and the town of Kingman. I have adopted a rule which of course the Law Court may or may not accept and follow it. If it does follow it, it makes an enormous difference in the total amount of indebtedness in the towns. I have held that a municipality or its officers, being indebted to an amount in excess of this 5 per cent limit, could contract a legal debt in only one way, and that is by borrowing in anticipation of taxes under the provisions of the Constitution, and that if it contracted any debt in any other way, whether it was a school officer who purchased school supplies or a selectman who purchased property for the town or expended money for the support of the poor and the town incurred that debt, that it was barred by the constitutional limits.

Now that is a question as to which there is a difference of authority in different jurisdictions. We have no decisions. And also it is a question which is indirectly involved in the same question, whether a town having made

an appropriation for a specific purpose, for support of poor, for instance, can go ahead and contract debts against an appropriation made due to the fact the appropriation has been made and you can assume sometime the tax will be collected to pay it.

Now as a result of that rule -- I will be brief about this and omit the small figures to save time -- in the case of the City of Eastport there were \$208,000 worth of claims filed. I allowed \$155,000. That included State taxes. It was not the full claim of the State: the State had various claims for children's relief and road-breaking and various things of that sort which I put in the same category with those of other creditors. I allowed the State taxes; I allowed the County taxes, except there were one or two years, I do not remember now which, which I held barred by the statute of limitations because they were so old. I allowed the rest of them and the bonds, found all the bonds were properly issued and within the legitimate debts of the city. That is all I allowed: the balance of \$52,000 disallowed consisting of the claims of the public utilities of which I spoke. So that, as a matter of fact, if we are going to make a settlement -- and this is only a suggestion -- you have got to add to that \$155,000 about \$20,000 more for these public utility claims if you get a settlement with them according to the way they talked; and that leaves you only about \$30,000, some of which is clearly illegal, barred by the statute of

limitations and otherwise. I have no doubt, as has been suggested, many of these ordinary creditors who do not regard their claims as worth very much would take a small percentage and get out and be glad to get it.

I speak of this as bearing upon the legislation question of what the State will do. The town of Connor, \$56,000 of claims were presented, and I allowed, applying this rule I spoke of -- and there were some notes allowed, some disallowed -- but out of that \$56,000 I only allowed \$8,400, because, applying that rule, those claims were simply out.

In the town of Blaine \$70,000 of claims were filed. I allowed \$24,000, which is a larger proportion.

Kingman was the worst proposition. There was \$41,000 in claims filed: I allowed \$20,000 -- and the curious thing about Kingman was that practically all claims of any importance or size were claims of people whose property had been taken and sold under execution by creditors of the town of Kingman. I did not see any way to avoid paying those claims under the statute and those claims were allowed. I do not think their valuation at present agrees with my figures but the difference is immaterial. Kingman has an indebtedness of \$20,000 with a valuation of \$87,000. Blaine is not so bad: Blaine has \$24,000 against \$460,000 valuation; in fact that is only a little more than 5 per cent.

Those will apparently work out, assuming you eliminate the other claims I have disallowed. What the Law Court will say about that is another proposition entirely, but if

the Law Court sustains that rule you are going to get the indebtedness of these municipalities down where it is a very much different proposition than appears on the face.

Now these debts were a legitimate, honest proposition, except there were some of them barred by the statute of limitations and some claimed interest which they did not show they were entitled to; but the great bulk of them would come under that rule. What the Court will say, I do not know. It is not quite so much a ~~case~~^{guess} as if you were going to submit it to the United States Supreme Court.

MR. WEBBER: Judge, I can recall several instances in past years when you persuaded me to accept a settlement in chambers against my better judgment. You have heard all the bars to potential settlement in the City of Eastport. Can you throw any oil on the waters, make any constructive suggestion that may get us together?

JUDGE POWERS: Well, it seems to me it ought to be possible to get them together by eliminating the proposition as has been suggested -- if they can make a sale of bonds they can eliminate the question of whether the State and County can accept bonds in payment of taxes. It strikes me there is some justification for doubt on that proposition at least. I am not pretending to speak with any authority, it is just a guess offhand, and it seems to me that it ought to be possible to reach an arrangement and ought to be possible to reach a friendly adjustment with Mr. Smith.

There is no question but he has done some work and should have a reasonable compensation for whatever he has done. There has not been anything that has appeared before me so far that would indicate that \$10,000 or \$5000 would be a justified charge for what has been done, But I do not think there is any question it is going to take ~~some~~^{any} trouble to settle with those creditors on the 76 per cent basis. The ordinary creditors down in the City of Eastport, they would jump at the chance and take it quickly. But it seems to me it ought to be possible for these gentlemen to get together in the right spirit and work out something and Mr. Smith receive fair compensation for what has been done. I wont attempt to place any figures on that. But you have got to pay, if you pay the bondholders 80 per cent you have got to pay Ned Merrill 80 per cent and probably the other utility on the same basis. He insisted he would not take any discount, but I think he will revise that.

MR. WEBBER: That is a strong starting position.

JUDGE POWERS: Well, he is looking after the business of his clients and that is his business, but I have no doubt he will accept the same amount.

Of course there were a few claims -- I don't know how many, that Mr. Burkett took out of this report which I made to this Commission, I do not think very many. The great bulk of them were merchant's claims for pauper supplies, wood for schoolhouses and things of that type. There were

a few thousand dollars of claims for things which were furnished in the year 1937 after the appropriation for the year had been exhausted: they were pauper supplies for which they contracted debts after the appropriation had been ~~entirely~~ spent. I do not know what may be done, but no person has raised before me the claim you could draw more than the amount of the appropriation.

I will say just a sentence or two. I appreciate the difficulty you gentlemen are in. If they could see the situation, everybody would recognize and admit it should be cleaned up if possible, not only this town but all this situation, but when you get to sitting down to draw an act to do it you have some burden.

CHAIRMAN DOW: If the Committee could do it, it would be a worthwhile proposition?

JUDGE POWERS: It certainly would. I do not know whether if you start it you can ever get anywhere unless you get back to the New Jersey act which Mr. Burkett has mentioned. I do not know what effect the New Jersey act has had on the credit of municipalities of the State of New Jersey.

MR. SMITH: New Jersey bonds are the poorest bonds on the eastern coast.

JUDGE POWERS: And they were before they passed this act.

MR. BURKETT: I hope we will never have to pass such an act in the State of Maine.

JUDGE POWERS: When you talk about appropriating funds, I

do not believe it is any use to go to the Legislature of the State of Maine and talk of putting in anywhere from half to three-quarters of a million dollars to pay the debts of these municipalities. Whether or not you could work out some plan-- take the little town of Connor or Kingman, what are you going to do? Nobody wants the bonds. I do not believe anybody can sell bonds, even you.

MR. DONALD SMITH: They didn't want Eastport.

JUDGE POWERS: They have got something back of it; but these little towns are going to the dogs every day and are getting poorer all the time. Another thing they have lost: most of them have considerable wild land and they cannot get the tax out of it they used to. The wild land tax used to run these towns, but now they cannot do that.

If the State could be induced to raise some sort of a revolving fund to assist in these settlements, take the obligations for a reasonable amount, not to pay all the debts in full, but to work out a settlement and be authorized to take the obligations of these municipalities and let them have money for it, you might perhaps get somewhere with them. I do not know but that is as far as you could ever go. Even sometimes you might put in a little more than the five per cent limit, which is a low limit. Any municipality at all ought to be good for ten or fifteen per cent of its valuation. It would take time to work it out, but you could do it. That is the only suggestion I can make. You can't raise money enough to pay all these

debts, although they are honest debts and people ought to have their pay.

CHAIRMAN DOW: Is it your opinion, Judge Powers, if the town of Connor were on its own feet now it could take care of itself currently?

JUDGE POWERS: It has.

MR. HILL: I would like to advance one more thought regarding Eastport: that on April 16th we had this worked out in such a way that the board was unanimously of the opinion that it was possible to pay 76 per cent to all the creditors. Now in spite of what Mr. Smith has said this morning tending to show that there has been no progress under the board, the board has been accumulating money and it has accumulated some more money since that date. Just before I came into this committee-room this morning, I received a communication from the State Treasurer's office indicating that a further deposit had been made there to the credit of the City of Eastport. We have \$10,000 more in cash now than we had on April 16th, and while I have not computed exactly, I think I am right in saying there are now funds enough available so that we could now pay 80 per cent to the bondholders and not as originally talked of, fifty per cent to the other creditors, but eighty per cent all around, provided we could get a loan and get somebody to take the new bonds.

MR. WEBBER: Can you make anything out of that, Mr. Smith?

MR. DONALD SMITH: I do not think we can add anything

further, except we do not have \$50,000. If any gentleman in this room has \$50,000 and will step up and say "We will buy City of Eastport bonds," that would make a difference to us. The only way we could agree to purchase these City of Eastport bonds is on our credit: we have got to go to the bank and borrow money. I wouldn't go to the bank and borrow one hundred cents on a dollar on City of Eastport bonds: we would borrow one hundred cents on a dollar less our \$10,000 fee. In that way we could carry the City of Eastport bonds for five years if we had to. But one of us may be in the service before we get through with this thing, and we are not going to carry a liability that is an impossibility. It is not a selling fee, it is not a fee for work: it is a fee for work and the liability, and I think it is justified. I certainly could not agree to anything less than that, and I think Mr. Stanley would stand behind me. I have talked with other houses and they would not buy a City of Eastport bond on a bet right now.

MR. WEBBER: Now, Mr. Smith, I think we may be making some progress. You say the fee of \$10,000 is for work and liability, and it is fair to say, is it not, that a very large part of the fee is for liability rather than for work?

MR. SMITH: I would say very definitely. We are trying to cover some of the expenses we had in the past on the thing but we have practically written that off.

MR. WEBBER: You say this in substance: "If we are asked to take bonds we will take \$50,000 worth of bonds, but we want \$10,000 for our trouble and risk, and will work it out the best way we can," but if you don't have to take the \$50,000 bonds and they can work it in some other way so you don't have to take the liability, then you would be paid only for your work, and wouldn't it be fair for you to make a very small offer in comparison to the \$10,000, and shouldn't there be two give or take offers made here, one that you say "We will take the bonds for \$50,000 and we want a \$10,000 fee," or, 2. "The 80 per cent proposition sounds good to us and if we do not have to take the bonds we will accept the 80 per cent and a small reasonable fee for the time and bother we have put in," and I am frank to say you will perform some public service in addition to that. Is that a fair statement?

MR. SMITH: Yes, we have considered that. But, as a matter of fact, when this thing is worked out and if it is worked out before the Legislature convenes -- and in our opinion it has got to be worked out before the Legislature convenes if at all, and before this Master's report is accepted -- somebody has got to take the liability. When you start your plan you have got to have arrangements made to take care of your bonds. Even if they agree, which we would assume they would do, on the cemetery funds they have agreed to take \$11,000 on cemetery funds, but we still have

got to take a liability of those \$50,000 bonds until the thing goes through. Those \$50,000 bonds have got to be issued: we have got to go to the bank and pay for those bonds and then we have got to turn around and sell them to the cemetery fund. When we start in on this thing somebody has got to carry a liability of that \$50,000 of bonds.

MR. WEBBER: Then after a reasonable period you will get out from liability on about \$11,000?

MR. SMITH: \$11,000 is all we have in hopes at the present time, but in talking with Mr. Burkett the other day he suggested he would be willing to work with us on this thing and he believed there were certain spots he knew of, including citizens in Eastport, where bonds could be placed. But we still couldn't count on that. There is a lot of work to do before you get the thing cleaned up, and the liability of the \$50,000 has still got to be taken by someone.

MR. WEBBER: Of course there is more to it than that. I think there may be a joker in his proposition about people in the City of Eastport taking a substantial amount of bonds off your hands, because that seems to be tied in to the continuation of the Commission in Eastport, and that seems to be a moot question. It boils down to this: You take bonds at such and such a figure or don't take any bonds at all and they unload them some other way and you take a much smaller figure, and if we haven't got enough

we will charge the rest up to experience.

MR. SMITH: We would still like to see a tie-in of the State of Maine in Eastport. In Waterville, that was one of the reasons we were able to eventually sell the City of Waterville securities, because we had a tie-in from year to year: we had a board of finance in for seven years. They can dictate from one council to another: your council are elected each year. We would like to have an understanding that the board would stay in Eastport until the Legislature convenes or an amendment is passed so we could have a tie-in.

MR. WEBBER: Can we make any progress, Mr. Hill?

MR. HILL: Mr. Smith has said something about the necessity of the board staying in there until the Legislature convenes. I should anticipate that there would be considerable time taken in working out such a settlement if we were to proceed at once, and I should think further, even ~~if~~^{if} all the preliminary work were done now and a settlement effectuated tomorrow, it is probable the board would feel justified in continuing control until the end of the current fiscal year or the municipal year of the City of Eastport, which would be December 31st. I do not think there is the slightest possibility that the State would get out of control before that date, even if a settlement were made tomorrow.

MR. SMITH: When I said "until the Legislature convenes" I mean if we go along on this thing we want to go along with

the understanding this board is cooperating and the Legislature is cooperating and were going to put out some further legislation that will take care of the situation so there will be a tie-in in a place like Eastport. There is a situation there where it might be disastrous for anybody to own any bonds because I think possibly they could get rid of \$50,000 in one year.

MR. WEBBER: You would like to see an amendment that provided that the Commission, after re-establishing the financial structure of the city or town, remain in control through this commission form of government for a period of at least three years thereafter?

MR. SMITH: I should think something like that would work awfully well.

MR. BURKETT: That section I read is broad enough to interpret in that way. That still does not complete the adjustment: you still have \$50,000 of bonds outstanding. The board would be perfectly justified under the statute in staying until there was a sentiment in that community that provided for good government.

(Off record discussion)

MR. HILDRETH: Mr. Chairman, I wish to make a suggestion. As I see it, this agreement has really got to come between the Finance Commission and Mr. Smith. I see two problems: one that of Eastport, and the proposition of reaching a solution by voluntary arrangement, and the other the

legislative program, which is concerned not only with Eastport but a legislative problem extending over a good many years. This Committee is going to meet in November. Why don't Mr. Smith and the Commission see if they can get together on a basis something like that Mr. Webber suggested, both of you try to get together on some legislation, or send your ideas to Mr. Webber, and then if this committee can give any blessing to either enterprise, let us consider it at our November meeting, which would give you time to turn around and still give us time to put our blessing on anything you can work out.

MR. BURKETT: Mr. Hill and I have given quite a lot of thought to proposed legislation. We both agreed we would, up to the first of December, assemble material.

MR. WEBBER: December 1st. is too late. We discovered yesterday the law says we shall prepare and file our final report thirty days before the beginning of the session.

MR. BURKETT: I do not know as I could have it all ready then, but we can have something. Of course the way the thing stands now, the board has not yet voted to renew its negotiations with Mr. Smith. The board has told Mr. Smith or his firm that as far as they were concerned the board wanted to make its own settlement. Whether they would now feel they would want to renew negotiations to see if something could be worked out is for them to decide.

CHAIRMAN DOW: Isn't that a question for them in executive session?

MR. BURKETT: Yes.

CHAIRMAN DOW: After all, they are not going to make a decision in this room.

MR. BURKETT: If they decide they want to continue to work with Mr. Smith, that is all right.

One reason I was interested in the beginning, back in the early part of February, in approaching Mr. Smith was not particularly in regard to Eastport -- I made it plain to him, because I think the problem in some of these other towns is more acute than Eastport; but I was trying to work out some system under which we could re-finance all these towns.

CHAIRMAN DOW: I think you are right there, because it looks as if you are not too far from the solution of Eastport with a little bit of luck and give and take.

MR. BURKETT: What is the opinion of the Committee, if you care to express it, as to whether or not the State having a stake in there of \$41,000, not including interest, \$10,000 of bonds and about \$10,000 open account, having gone all over this thing, would you be willing to state your opinion as to whether the State should take 76 per cent for the sake of cooperating and cleaning this thing up?

CHAIRMAN DOW: I don't know as I can speak for the Committee, but if it was my personal bill I would take it mighty quick.

MR. BURKETT: When you stop and think of the difficulties of collecting, if this thing ever goes beyond the report and

everybody starts collecting, they will sue and get a judgment. Mr. Smith may be the first one to get a judgment on this \$500 claim, and he will go down there and attach Mr. Beckett's house; I go down there with my claim for a cord of wood furnished the school and take the house away from Mr. Smith, and it starts a continual round of litigation.

MR. LIBBY: Why is the State entitled to any more percentage than a private individual?

MR. BURKETT: I never thought they were. That was Judge Powers' and my feeling: if it came to a question of anyone making more sacrifice than somebody else the State ought to make it.

MR. BOUCHER: The city back hom, they had a lot of old taxes and tax liens and compromised most of them on fifty per cent and were glad to get out and clean it up.

MR. BURKETT: I left with you one thought about the collection of those taxes which somebody ought to work on.

CHAIRMAN DOW: I think we have got a lot of thoughts so far as the Committee is concerned, from you and everyone else.

MR. BURKETT: I have conceived all the way through this thing we were gradually working up to a situation in these towns where the easiest and quietest method with the least publicity was the way to handle them. We have got cases pending in this report that Judge Powers has filed involving

the legality of a debt contracted by a town which had exceeded its debt limit out of an appropriation which was not exceeded. You let the word go out over Maine that it is possible for a town to slough off its indebtedness, as the town of Anson did in a leading case in Maine, 134 Maine: the town of Anson, Maine came down to Portland and bought a truck and snowplow for five or six thousand dollars and appropriated money for it. They took the snowplow up there one winter and partly wore it out. Then somebody conceived the idea they didn't have to pay for it. It was Mr. Ela, our same Commissioner. The Portland Tractor Company sued them. The Law Court said very definitely they didn't have to pay for it because they were over the debt limit.

CHAIRMAN DOW: How was the tractor company to know that?

MR. BURKETT: That is quite a burden, but our Law Court has said repeatedly that anybody who trades with a municipality does so at their peril. If you get this thing into the Legislature and get it discussed and get all the towns to thinking about repudiation, you are going to start a wave of it all over the State.

CHAIRMAN DOW: It is hard enough to get men to work on the road now. If they don't think they are going to get paid, you can't get any.

(Off record discussion)
