

# MAINE STATE LEGISLATURE

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June 1, 1922

To Hon. Charles E. Gurney, Chairman, Public Utilities Commission

Re: Securities of Foreign Corporations

Under date of May 29th, you inform me that at the request of the Commission you propose the following questions:

"Does Section 37 of Chapter 55 as amended by Chapter 128 of the Laws of 1919 give this Commission jurisdiction concerning the issuance of securities over corporations organized in other states, or does it affect only the issuance of securities by State of Maine corporations?"

The consideration which I have been able to give to this question and the examination of such authorities as I have found in the short time available convince me that, while most of the sections of Chapter 55 in the regulatory powers conferred apply to foreign corporations doing business in this State as well as to Maine corporations, Sections 37, 38 and 39 apply only to corporations organized in this State.

While the wording of the section is not so clear as might be, the meaning, it seems to me, is plain and any construction other than the one suggested would be unsatisfactory and unwise.

To hold that Section 37 applied to foreign as well as domestic corporations would result in a discrimination between foreign corporations existing and doing business in this State in 1913, when this statute was passed, and those coming into the State to do business since that date. There is no apparent reason for such discrimination and the validity of such would be at least questionable. It is hardly fair to the legislature to take the view that such a result was contemplated.

In my opinion the language should be construed as though it read, "any public utility now organized and existing and doing business in the state," or "hereafter incorporated, eec." Transfer the comma following the word "existing" so as to follow the word "State", and you have the meaning as above set forth clearly expressed. A misplaced comma ought not to be allowed to interfere with a sensible construction of a statute.

There are other provisions in different sections of Chapter 55 which seem to be inconsistent with the idea that Section 37 was intended to apply to foreign corporations, but I have not time to call attention to them in detail.

The view herein expressed is sustained by the Supreme Court of New Hampshire, In re Fryeburg Water Company, 106 Atlantic Reporter 225. The wording of the New Hampshire statute is fully as broad in its terms as is ours, but the court held that it did not apply to foreign corporations. In the court of the opinion the Court states;

"It is a well recognized principle of law that the courts of our State have no visitorial

power over corporations of another State and no jurisdiction to determine questions relating to their internal affairs."

The fact that a foreign corporation is engaged in business in this State and owns property here, while bringing it within the jurisdiction of our court, does not subject it to legislation purporting to regulate the exercise of those inherent corporate powers conferred upon it by the legislative power of the incorporating State.

The same question was decided the same way in the Missouri case of Public Utilities Commission vs. Union Pacific Railroad Company, P.U.Reports, 1917, F. 774.

I find no case reported holding the opposite view.

William H. Fisher  
Deputy Attorney General