

# MAINE STATE LEGISLATURE

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April 27, 1943

Joseph W. Bailey, 2nd Lieut. Air Corps,  
Personal Affairs Officer,  
Coffeyville Army Air Field,  
Coffeyville, Kansas.

Dear Sir:-

I have your letter of April 17th, enclosing copies of a will and of a power of attorney, which copies I am returning herewith. In regard to the will I have the following comments:

1. A bond is required of an executor in this State unless he is excused by the testator. Observation and experience have proved how unwise it is to have an executor unbonded, unless he is himself the sole beneficiary. I have therefore struck out the provision in regard to bond in paragraph 3 of your will form. Certainly, with such extensive powers as you give in paragraph 4 of the form, a bond should be required.

2. From a purely legal standpoint there is nothing particularly objectionable about paragraph 4, although if the testator is leaving any estate at all, it is far wiser if the executor's acts are scrutinized by a judge of probate. Probably it would be difficult to obtain a surety bond, if an executor were given such blanket authority.

3. The State of Maine does not require a seal, although a seal does no harm to a will. Inasmuch as it is your intention to have these wills executed in a place where seals might be unavailable, I suggest that you omit the word wherever it occurs.

4. The attestation to the mental capacity of the testator which appears in the witness clause would not be accepted as evidence in the courts of Maine, and is therefore surplusage. The language does no harm to the document, if it is left in.

As to the power of attorney, I can simply say that probably the courts would be as sympathetic to this document as they felt they could be without setting precedents that would cause embarrassment later. Of course, a power of attorney in blanket form is never a very safe thing to rely upon. Of course, the fact that a person has been reported "Missing in action" is not in itself evidence of death, and therefore such a provision may be regarded as surplusage. If the grantor of the power is really dead, the power is revoked by action of law, and if he is not dead, the power continues in effect, though there have been rumors of his death.

A power of attorney in this State requires the actual affixing of a seal of some sort. The seal does not need to be a wafer in any particular form. I have myself used a piece of postage stamp or a bit torn out of the flap of an envelope before now, when no other seal was available.

Very truly yours,

Frank I. Cowan  
Attorney General

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