

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

December 20, 1955

To Paul A. MacDonald, Deputy Secretary of State

Re: Partnership

We have your request for an opinion concerning the following fact situation:

Under date of July 27, 1953, Guy Agreste and Edward L. Caron combined to form a partnership for the purpose of buying and selling used cars in the City of Biddeford under the partnership name of Elm City Motors. A certificate to this effect was duly filed with the clerk of the City of Biddeford, in compliance with the statute.

On the 1st day of September, 1955, Caron and Agreste agreed to bring into the partnership one Romeo A. Lambert. Under the conditions of the agreement the original conditions of partnership were to remain unchanged and binding on all three of the partners.

The next day, the 2nd day of September, 1955, by written agreement, Edward Caron withdrew from the partnership.

All such actions were properly recorded in the city clerk's office, Biddeford.

You have asked this office if, under the above circumstances, the partnership now remains the same as that originally formed in 1953.

It is our opinion that the withdrawal of Edward L. Caron from the partnership on the 2nd day of September resulted in the dissolution of the partnership. See to this effect *Cumberland Co. Power & Light Co. v. Gordon*, 136 Maine 213. Considered in that case was Section 4 of Chapter 44, R. S. 1930, now seen as Section 12 of Chapter 171 of the Revised Statutes of 1954. This section provided that whenever any member of a partnership withdrew therefrom he might certify under oath to such withdrawal, the certificate to be deposited in the clerk's office.

In arriving at its decision the Court found itself faced with this question: "To what extent does this statute, enacted in 1915, modify the common law as to the effect of the dissolution by the withdrawal of the partner?" The answer was contained in the last paragraph of the case and is here quoted:

"The purpose of the statute is effected when we interpret it to mean only that one who withdraws from the partnership and does not file a certificate of withdrawal (there being no actual estoppel) is conclusively presumed still to be a member of it when carrying on the business within either its actual or apparent scope."

It is our conclusion that this decision clearly holds that withdrawal of a partner dissolves the partnership.

JAMES GLYNN FROST
Deputy Attorney General

January 4, 1956

To Fred J. Nutter, Commissioner of Agriculture

Re: Loans and Mortgages between Soil Conservation District and Farmers Home Administration.

You ask if the Soil Conservation District formed under the provisions of Chapter 34, R. S. 1954, as amended, has the authority and power to contract for