Frank F. Harding
Attorney General

James Glynn Frost
Deputy Attorney General

STATE OF MAINE

Department of the Attorney General

Augusta
March 6, 1957

Albert S. Noyes, Bank Commissioner
State House
Augusta, Maine

Dear Mr. Noyes:

This is in response to your memo of February 5, 1957, in which you ask for answers to the following questions:

"May a corporation be organized under the general law for the primary purpose of purchasing contracts or notes incorporated in or secured by conditional sales contracts or chattel mortgages on personal property?"

"Does the Banking Department under sections 210 to 227, chapter 59 of the Revised Statutes have supervision over a corporation organized, either under the general law or special charter, for the above purposes, if the notes cover sums of $2500 or less and the interest rate is over 12% per year?"

We answer the first question in the affirmative. A corporation may be organized under the general law for the primary purpose of purchasing (or discounting) contracts or notes incorporated in or secured by conditional sales contracts or chattel mortgages on personal property.

The essence of the problem presented by you is whether or not the discounting or purchasing of such commercial paper is in fact a loan.

If such transaction were in fact a loan, then an organization having such a purpose could not be incorporated under the general law, because Section 8, Chapter 53, R. S. 1954, excepts from in-corporation under the general law

> "corporations for banking . . . . or corporations intended to derive profit from the loan of money except as a reasonable incident to the transaction of other corporate business or where necessary to prevent corporate funds from being unproductive. . ."

Chapter 59 (Banks and Banking), Section 4 (Banking defined), R. S. 1954, provides that

> "a corporation intended to derive profit from the loan of money except as a reasonable incident to the transaction of other corporate business or when necessary to prevent corporate funds from being unproductive."

Application of the two above cited sections of law would require us to refuse to approve the certificate of incorporation of a corporation, the primary purpose of which is to lend money.

Our study of the problem, however, reveals that the discounting or purchasing of commercial paper, which had its inception by delivery for value, is not a loan. This principle does not apply to purchases by banks, in which case, apparently, a different rule applies.

Our opinion applies to the following and similar factual situations:

A dealer in personal property sells to X, the maker. X, the maker, executes a paper promising to pay for the personal property at a future date. The paper usually is accompanied by an additional instrument, commonly a conditional sales contract, sometimes a mortgage.

The dealer then sells the paper to the corporation in question, by assigning, endorsing, or taking other necessary steps to transfer the paper.

We are of the opinion that under such a situation the discount or purchase is not a loan. French v. Grindle, 15 Me. 163.

The answer is the same whether the dealer transfers the paper with or without recourse.

The answer does not apply to the discount or purchase by a party of accommodation paper, with knowledge of its true character, or to the discount of a note for a maker, or for a broker acting for a maker.

For a discussion of cases treating of the problem see 165 ALR 626, and Paton's Digest, 2942a.

For the reasons above stated, we answer the second question in the negative.

Very truly yours,

/s/ James G. Frost

James Glynn Frost
Deputy Attorney General

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