

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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September 22, 1959

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Bank Records — Minimum Period of Retention

We have examined the proposed rules and regulations drawn pursuant to Chapter 59, section 197-A, Revised Statutes 1954, as enacted by Chapter 87, Public Laws of 1959, by which the Banking Commissioner is authorized to promulgate rules and regulations classifying and prescribing the minimum period for which bank records shall be retained.

We are of the opinion that enabling legislation is adequate authority for the promulgation of the proposed rules and regulations.

Our examination of the schedule does not reveal any periods of retention which do violence to our laws, but it may be that in such a comprehensive schedule of records, dealing with a specialized business, a particular period of retention is in error. Experience gained with the passage of time will correct such errors.

JAMES GLYNN FROST

Deputy Attorney General

September 22, 1959

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Rules and Regulations re Banks and Trust Companies (Form and Procedure)

We have your memo of August 31, 1959, in which you ask for advice concerning section 2-A of Chapter 59, Revised Statutes of 1954 as enacted by section 2 of Chapter 178, Public Laws of 1959. The said section 2-A reads as follows:

“Sec. 2-A. Department regulations. The Bank Commissioner, with the advice and joint consent of the advisory committees of the savings banks and trust companies, as provided for in section 1, may from time to time make and shall enforce rules and regulations relating to said banks and trust companies, subject to the provisions of this chapter.”

You state you would appreciate advice as to the Maine statutory law or common law relative to the form in which regulations must be published, formal notification to officials such as the Secretary of State, records of meetings wherein regulations are adopted and any other formalities that should be adopted.

Ordinarily, the statute granting rule making power also sets forth a procedure which must be followed in order for the rules to become effective; hearing on the rules, notice of the hearing, publication of the rules, and perhaps a filing with the Secretary of State, but usually no such filing is required.

Occasionally, the enabling act is as brief as the one in your chapter.

Other than the law directly providing for such rules, this state does not have any general law establishing the form of the rules or the procedure to be followed when an administrative agency promulgates a rule.

Davis, on Administrative Law, 6.01, states the following:

“Except in the states whose statutes require hearings for rule making (. . .), and even in some of these states when the hearing requirement does not apply, the usual maximum requirement is what is prescribed by the Model Administrative Procedure Act — notice and opportunity to submit “data or views orally or in writing.”

In cases where the statute authorizing the rules are as brief as that contained in the banks and banking law, perhaps the following procedure could be used:

1. Prepare tentative rules, with the advice of the advisory committee.
2. Send such tentative rules to interested parties and ask that comments be submitted.
3. Set a date on which the rules are to become effective, within which time the requested comments are to be studied, or Set a date for a hearing at which time comments on the proposed rules may be presented orally, with the rules to become effective at a subsequent date, having in mind the time required to study the views presented.

No particular form for rules is required, but the system of sections, paragraphs, etc. used in the Revised Statutes would be adaptable to rules, and would tend to make their use more convenient.

The final form of the rules should, in your case, indicate that they have been approved and consented to by the advisory committee.

JAMES GLYNN FROST
Deputy Attorney General

September 24, 1959

To: John J. Maloney, Jr., Chairman
Maine State Liquor Commission
Augusta, Maine

Re: Commission Rule and Regulation No. 69

Dear Mr. Maloney:

We have your request for our opinion regarding the authority of the Commission to establish Rule No. 69.

Rule No. 69 read as follows:

“Holders of Certificates of Approval shall notify in writing the Commission and the distributor affected at least 60 days previous to any change made by them either in their distributors or the territories of their distributors in this state.

“Wholesale licensees shall notify in writing the Commission and the Certificate of Approval holder affected at least 60 days previous to any change in either the territory or the distribution of their products.