

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

December 10, 1959

Carlston L. Bradbury, Bank Comm.

Banks and Banking

James Glynn Frost, Deputy Atty. Gen.

Attorney General

Registration of the Beacon Finance Company as a dealer in securities.

We have your memo of December 7, 1959, in which you ask further questions with respect to the Beacon Finance Company of Bangor and that company's sale of securities before being registered as a dealer.

Your present concern relates to the possibility of present stockholders (of stock sold in violation of the Securities Law) possessing a right superior to that of stockholders of stock sold after the company is properly registered as a dealer.

You say:

"We have remaining before us the matter of registering the Beacon Finance Company as a dealer in securities for the purpose of issuing new securities of that company. Section 229 of Chapter 59 requires that this Department be satisfied that in connection with the sale of new securities there be "disclosure of pertinent facts sufficient to enable intending purchasers to form a judgment of the nature and the value of the securities . . ." In view of the fact that securities issued previously by this company and still outstanding were issued by means not in accord with the Blue Sky Laws of this State, the question is raised as to whether or not purchasers of such securities might have direct reimbursement by the company and conceivably jeopardizing the financial condition of the company. Unless it is determined that there are no means by which owners of outstanding stock can exercise rights superior to those ordinarily held by a preferred stockholder then it would appear that information regarding any potential liability to those present stockholders would be material and necessary "to enable intending purchasers to form a judgment of the nature and value of the securities". Therefore, this Department should insist that this information be presented clearly to prospective purchasers in the prospectus accompanying an offer to sell these securities before approving the registration of this company as a dealer in securities. Would you please express an opinion on this point?"

Carleton L. Bradbury, Bank Comm.

December 10, 1959

We have been unable to find any statute which would confer upon the purchaser of stock sold by an unregistered company any greater rights than those secured to a purchaser of stock from a duly registered company.

"The purpose and effect (of Blue Sky Laws) is to protect stockholders and the investing public generally from fraudulent and worthless securities, and also, to some extent, to protect persons dealing with, and creditors of, the corporation . . . Their application to the issuance of stock does not seem to call for any different judicial construction in such cases from that given to them by the courts generally where other transactions are involved." Fletcher Cyclopedia Corporations Vol. II pp.404 - 405.

So, in our laws, while the sale of securities by one not registered is a crime, the penalties proscribed are in addition to, and not a substitute for, any civil or criminal liability now or hereafter existing. Chapter 59, section 240, R. S. 1954.

Of course, if any such stock is fraudulently issued, or is fictitious stock, the holder would have an action against the company, or its officers.

We, therefore, conclude that bona fide stock issued and sold by a company before becoming registered confers no right greater than that possessed by one who purchases the same class stock from that company after it is registered. There appears to be no law relating to stock such as relates to loans by a small loan company made in violation of laws permitting certain interest charges, which result in such loans being void.

James Glynn Frost
Deputy Attorney General

JGF:GBH