

MAINE STATE LEGISLATURE

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December 14, 1959

Robert B. Williamson, Jr., Esquire
Verrill Dana Walker Philbrick & Whitehouse
57 Exchange Street
Portland, Maine

Dear Bob:

You have asked this office to re-examine the present procedure followed by the Secretary of State in accepting, or refusing to accept, papers filed by foreign corporations. Your request relates to the registration of foreign corporations to do business in this state under the provisions of Chapter 53, section 127, Revised Statutes of 1954.

The pertinent part of section 127 reads as follows:

"Every corporation established under laws other than those of this state, for any lawful purpose, other than as a bank, savings bank, . . . shall before doing business in this state, in writing appoint an individual who is a resident of the state . . . The power of attorney and a copy of the vote authorizing its execution, duly certified and authenticated, shall be filed in the office of the Secretary of State and copies certified by him shall be sufficient evidence thereof . . ."

From these words we gather it is the purpose of a corporation with which the law concerns itself.

If the purposes indicate that the foreign corporation may do a banking business in Maine, then the statute does not contemplate the filing of that corporation with the Secretary of State.

Robert N. Williamson, Jr., Esquire

December 14, 1959

In instances where the purposes of a corporation are multiple, including some purposes which can be exercised by a domestic corporation organized under the general law, such as banking, it has been a long established custom to accept filings by such company upon receipt of a certificate to the effect that the stockholders of the corporation have voted that such banking business will not be carried on in the State of Maine.

It appears that this custom was established some fifteen or twenty years ago and that the form of the certificate was prepared by Abraham Breitbard, then Deputy Attorney General. The custom appears to be based upon the premise that only the stockholders have the right to limit the purpose of the corporation.

Consequently the Secretary of State has refused to accept the filings of a corporation whose purposes indicate that it may do a banking business when the directors only certify that the corporation will not conduct a banking business in the State of Maine.

It is urged that this custom is a poor policy for state officials to enforce because it keeps out of the State of Maine reputable concerns which would enhance the financial picture of the state's business.

It is our belief that we are presently administering the policy set forth by the legislature. Perhaps the legislature, upon being presented with this problem, will change its present laws.

A literal reading of the statute quoted above might indicate that our present procedure goes beyond the law in that it is the corporate purpose that the statute mentions. We believe that such a practice is justified, however, in view of the power stockholders generally have over the purposes of a corporation; and we are of the belief that the law is presently being administered in accordance with legislative policy.

We are of the opinion that to go further and record the filings of corporations whose purposes permit the corporation to do a banking, or similarly prohibited business, on the affidavit of directors that such a business will not be conducted in this state, would be an act not contemplated by the law.

Robert B. Williamsen, Jr., Esquire

December 14, 1959

Of course, in any case, where the corporate purpose was of a type commonly used in some areas, providing that such a business would be carried on only in those states where that business is permissible under the state's laws, then an affidavit of the officers that such business would not be carried on in this state would suffice.

Very truly yours,

James Glynn Frost
Deputy Attorney General

JGF:GMH
(Dist. 12/11/59)