STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

June 8, 1961

To: Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Van Buren-Madawaska Corporation

Reference is made to your letter of May 10, 1961 and the attached letter from Van Buren-Madawaska Corporation.

According to the letter from the Van Buren-Madawaska Corporation they use six boats on the St. John River for log driving purposes. These boats are made in Canada. They are used only in the section between the mouth of the Burningham brook and the mouth of the St. Francis River. The boats are used for about three or four weeks and then returned to Canada following the drive.

The question raised is whether these boats must be numbered under the provisions of Public Laws 1959, Chapter 349.

It would appear that the boats are in Canada for about 48 to 49 weeks of each year. They are in American waters only 3 to 4 weeks per year. It would seem logical to conclude that these are boats "from a country other than the United States." Chapter 36-A, section 6, II.

The next question to be answered is: Are they "*temporarily* using the waters of the States?" (Emphasis ours.)

Normally, the rules and regulations promulgated by the Commissioner would cover this problem. In the present instance the Commissioner has not yet made rules and regulations. Therefore, this office, in the absence of departmental regulations, will rule as a matter of law that use of a boat or boats from Canada for 3 to 4 weeks per year is a temporary use.

Our conclusion is that these boats do not require a license.

GEORGE C. WEST
Deputy Attorney General

June 8, 1961

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

Re: Licensing of Foreign Banking Corporations

Refer to your memo of June 7, 1961. In this memo you state:

"A foreign banking corporation has proposed to place advertisements in papers distributed in this state for the purpose of soliciting deposit accounts. They ask if any conditions must be fulfilled to comply with state law prior to undertaking this venture.

"We have advised the writer that the bank should make application for a license which would authorize a foreign banking corporation to conduct business in this state as provided by Section 1, Subsection VII of Chapter 59. We have considered that the solicitation of accounts to be 'doing a banking business' as that phrase is defined in Section 4 of Chapter 59. We are of the belief that this definition which includes the term 'solicitation' without qualification as to method, place, etc., imposes a different standard than that usually applied to 'doing business' activities. More particularly, it would appear that resident agents or in-state offices are not essential prerequisites in this instance to 'doing business'."

This office concurs in the thoughts expressed above. The wording of the

statute leaves little doubt that the "soliciting" of money on deposit as a regular business intended to derive profit from the loan of money, with the exception noted in the statute, constitutes doing a banking business in Maine.

The only limitation that might be placed on this prohibition is that such solicitation by advertisement must be in papers, magazines, flyers, etc. "published" in Maine. The fact that an advertisement may be placed in some paper or periodical published outside the State and incidentally "distributed" in this State would not constitute doing a banking business in Maine.

GEORGE C. WEST
Deputy Attorney General

June 8, 1961

To: Dean Fisher, M.D., Commissioner of Health and Welfare

Re: Prepaid Funeral Arrangement

You have asked for a ruling on the instrument signed and dated February 12, 1961, whereby an undertaker agrees to furnish a complete funeral upon death.

The question raised is whether or not this prepaid funeral expense is to be considered as a cashable asset. Previous to this, the department has always considered prepaid funeral expenses as cashable assets because most agreements have been worded in such a way that the person depositing the money with the funeral director could recall the funds at any time.

Since September 12, 1959, Chapter 151 of the Public Laws of 1959, has been in effect. This provides in substance that all monies paid during a person's lifetime to any individual, firm, etc., under an agreement that services be performed in providing burial of the individual, shall be deposited by the funeral director within thirty days in a separate account in a bank in the name of the funeral director as mortuary trustee. The law further provides that this money shall be held in such account, together with the interest.

There are three conditions under which the funeral director may withdraw the funds:

1) With the written permission of the person paying the money
2) Written instructions of his legal representative, or,
3) Death of person paying the funds.

It was the apparent intention of the legislature that any payments made to a funeral director are made under a so-called statutory trust agreement and he is duty bound to fulfill that trust. It would appear that a withdrawal during the lifetime of the person paying the money to a funeral director could only be done for the purpose of transferring the account to another bank. There is nothing in the law which allows revocation of the trust by mutual agreement of the parties.

It seems to me that the person making these payments to the funeral director has divested himself or herself of this money and cannot claim the money back at any time. Therefore, I feel that the previous ruling of the department and any previous opinion by the Attorney General's Office should be now reversed on the basis that the legislature has changed the situation. I, therefore, rule that Public Law 1959, Chapter 151, is effective to make such prepaid funeral expenses no longer a cashable asset.

GEORGE C. WEST
Deputy Attorney General