

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

May 28, 1963

To: Philip R. Gingrow, Banks and Banking

Re: Lending Money by Corporations

There are corporations engaged in selling home improvement items, appliances and even possibly motor vehicles, boats and other items of tangible personal property. On many occasions they are able to make sales only by advancing money to the purchaser to pay off other installment contracts. In this way the purchaser consolidates two or more such contracts in one creditor. The sales corporation then sells the paper to a bank or some concern engaged primarily in the business of purchasing third party paper. Question:

1. Would the lending of money by a corporation engaged in the home improvement business, or some business selling tangible personal property, to its customers for the purpose of consolidating other installment obligations be considered "a reasonable incident to the transaction of other corporate business?"

Answer:

Yes.

The reason for the question is the wording in chapter 53, section 8, and chapter 59, section 1-B, I, B. Chapter 53, section 8 provides in part:

"Three or more persons may associate themselves together by written articles of agreement for the purpose of forming a corporation . . . to carry on any lawful business anywhere . . . ; and excepting corporations for banking, . . . and the business of savings banks, trust companies, loan and building associations 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, section 1-B, I, B, provides in part:

"'Banking business' means

"B. The loan of money for profit by a corporation except as a reasonable incident to the transaction of other corporate business or when necessary to prevent corporate funds from being unproductive."

Your question may be one which will someday have to be answered by the Supreme Judicial Court. This question could arise in a number of ways. This opinion, however, can serve as a guide for your office in making any investigations and determinations as to violations of chapter 59.

The corporate purposes as set forth in the certificate of organization may not give the corporation the proper authority to undertake this type of activity. However, this is not a matter which need concern your office, but it could well affect the court in ruling on the question.

There have been no court decisions on this question in Maine. We, therefore, answer your question based on our interpretation of the two statutes.

The loaning of money to a purchaser to pay off other installment debts and consequent consolidation of the two or more debts is the loaning of

money as "a reasonable incident to the transaction of other corporate business." It is, therefore, legal so far as your office is concerned.

It is not necessary to answer your second question.

GEORGE C. WEST

Deputy Attorney General

June 3, 1963

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: School Residence

Your memorandum dated May 23, 1963, is answered below.

Facts:

The Town of Denmark pays tuition expense to Bridgton Academy covering pupils from the Town who attend the Academy. The parents of one of the students boarding at the Academy contend that their son is entitled to Town tuition privileges. One parent (father) is a school teacher in Bayville, New York, who owns real property in Denmark upon which he pays real estate taxes; and he also pays a poll tax to Denmark. During certain school vacation periods allowed in New York the parents inhabit the Denmark residence; during all other times the parents reside together in New York. The Denmark school officials maintain that the son is not entitled to tuition privileges for the reason that the parent is not maintaining a home in Denmark during the school year.

Your department desires an opinion in order to adjudicate tuition claims before the payment of subsidy is made.

Question:

Are tuition privileges available to the son in light of the given facts?

Opinion:

We answer the question in the negative.

The applicable law is found in Chapter 41, section 44, R. S. 1954, as amended:

" . . . every person between the ages of 5 and 21 shall have the right to attend the public schools in the administrative unit in which his parent or guardian has residence. Residence as used in this section shall mean the administrative unit where the father maintains a home for his family. If the parents of the child are separated, residency shall be considered to be the administrative unit where the person having custody of the child maintains his or her home."

The question we must necessarily ask ourselves is: Whether the father is *maintaining a home* for his family in Denmark.

"Maintain" as used in section 44, may be said to be synonymous with "provide." *Webster's New Collegiate Dictionary* defines "maintain" as: "To continue or preserve in or with; to carry on." The following language appears in *Words and Phrases*, "Maintain":

"'Maintain' means to support, to sustain, to uphold, to carry on, or continue."