

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

"Our individual preferences . . . are not the constitutional standard. The constitutional standard is the separation of church and state." *Zorach v. Clauston*, 343 U.S. 306.

We cannot properly educate our children, and we cannot demand of them respect and discipline, if we ourselves do not show respect for the law. To be responsible citizens we must practice what we preach and set the example by obeying the law.

Respectfully yours,

FRANK E. HANCOCK

Attorney General

November 7, 1963

To: Philip R. Gingrow, Banks and Banking

Re: Sales Finance Company License

Your memorandum of September 18, 1963, wherein you request an opinion under the Motor Vehicle Sales Finance Act, is hereby acknowledged.

Facts:

The Motor Vehicle Sales Finance Act, R. S. 1954, c. 59, sections 249 to 259, provides in Section 250 for licensing of sales finance companies and retail sellers. Subsection I of said Section 250 provides in part:

"No person shall engage in the business of a sales finance company or retail seller in this State without a license therefor as provided in Section 249 to 259, inclusive."

Subsection III, paragraph B of said Section 250 relates to the amount of license fee and provides in part:

"For a sales finance company, the sum of \$100 for the principal place of business of the licensee within this State, and the sum of \$25 for each branch of such licensee maintained in this State."

You state that a foreign corporation currently maintains two offices within this State through which it purchases conditional sales contracts on consumer goods, excluding motor vehicle transactions. The foreign corporation proposes to commence the purchasing of conditional sales contracts on motor vehicles sold in this State, but it hastens to add that all of this business will be done through an out-of-state office.

Question:

Is it necessary for this company to obtain a sales finance company license for their two Maine offices before they begin to engage in the business of buying conditional sales contracts on motor vehicles?

Answer:

Yes.

Opinion:

Your attention is directed to the opinion of James Glynn Frost, Deputy Attorney General, dated April 29, 1958, wherein it was held that a sales finance company which conducts its business outside the State of Maine and

maintains no office in this State may not be licensed as provided in Section 250 for the reason that the provisions of R. S. 1954, c. 59, Sections 249 to 259, contemplated that such licensee shall be doing business in the State of Maine and have officers and offices in the State of Maine.

A necessary corollary to that opinion would be that a sales finance company conducting a business outside the State of Maine whereby it purchases conditional sales contracts entered into in the State of Maine but maintaining offices in the State of Maine and doing business in the State of Maine must secure a license for the two offices in the State pursuant to section 250.

"Foreign corporation, which had an arrangement with a resident motor vehicle concern whereby it bought notes which were taken from purchasers of automobiles, and which furnished blanks to the motor concern on which to make financial reports, held not "doing business" within the state, and hence it could maintain action on default payments on purchase-money note which it had bought." *Equitable Credit Co. v. Rogers*, 299 S.W. 747, 748, 175 Ark. 205; *Words and Phrases*, "Doing Business."

"A foreign corporation engaged in financing mobile homes sold to dealers in Montana, was 'not doing business in the state,' within Montana statute pertaining to regulation of foreign corporations, and could enforce contracts with Montana dealers although it was not registered in Montana, where it did not have any office, place of business or resident agents or employees in the state, did not deal directly with any customers or purchasers, and conducted its business by mail pursuant to an agreement reciting that it was made and entered into outside the state." *Minnehoma Financial Co. v. Van Oosten*, D. C. Mont., 198 F. Supp. 200, 204, *Words and Phrases*, "Doing Business."

The cases deciding that corporations were not "doing business" within the state were cases in which the corporations never came within the boundaries of the state, maintained no offices in the state, and employed agents within the state on a commission basis in such a manner as to make them independent contractors, thereby bringing the cases within the opinion of James Glynn Frost, *supra*.

The Legislature did not intend to allow a situation to exist whereby a corporation could maintain offices in this state, purchase conditional sales contracts on motor vehicles ostensibly through an out-of-state office and not be required to obtain a license as a motor vehicle sales finance company. There would be nothing to prevent this company from processing such motor vehicle transactions through one of its local offices. As long as the corporation is doing business in the State of Maine and has officers or offices in the State of Maine, it must obtain a license under the Motor Vehicle Sales Finance Act if it purchases conditional sales contracts on motor vehicles sold in Maine, regardless of the location of the office handling such contracts.

CARL O. BRADFORD

Assistant Attorney General