

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

Reasons No. 4:

Under R. S., ch. 22, section 27:

"The board, after examining an application for dealer or transporter registration plates, may order the Secretary of State not to issue same stating the reason therefor."

The authority of the board to issue motor vehicle dealer registration plates is found in section 26 which has been quoted extensively in this opinion. Now we look at another angle of this section. The board in order to issue such plates must be satisfied of three things:

- (1) "... that the applicant maintains a permanent place of business in the State where said applicant *will be engaged in the business of buying and selling of motor vehicles*, and
- (2) "... with the other facts stated in the application, and
- (3) "... that the applicant meets the minimum standards herein set forth." (Emphasis supplied).

It is one of the functions of the board to examine the evidence in each case to satisfy itself as to whether or not the applicant "*will be engaged in the business of buying and selling of motor vehicles.*"

It should be noted, from the statement of facts, that although the applicant has sold no motor vehicles in 1963, he claims to have 20 vehicles *for sale* at the present time. The board is not bound by the activity, or lack of activity, in the past. The board must determine if the applicant "*will be engaged in the business of buying and selling of motor vehicles.*" This means that the board shall be satisfied that he will buy and sell motor vehicles in the coming year. It should examine all the evidence in making its determination.

At the present time there is evidence that he has bought 20 motor vehicles. Presumably he will sell some or all in the future.

Further, if the board is satisfied that *all three conditions* are met by the applicant it "*shall order the Secretary of State to issue a certificate of registration.*" Thus, issuance is mandatory when all statutory conditions are met to the satisfaction of the board. When the board cannot order issuance of a certificate of registration, it must order the Secretary of State not to issue the same.

GEORGE C. WEST

Deputy Attorney General

January 16, 1964

To: David Garceau, Commissioner, Banks and Banking

Re: Sales of Negotiable Checks and Money Orders by Agents of Banks

Facts:

The 101st Legislature enacted P. L. 1963, chapter 176, "An Act Relating to Sale of Negotiable Checks and Money Orders." This act exempted "financial institutions" and "national banking associations" from its provisions.

One of the exempted classes proposes to sell negotiable checks and money orders through agents. This bank and places of business enter into an "agency agreement" whereby the agent sells the negotiable checks and money orders for the bank as principal. Proper safeguards for the protection of the public appear to be made in the "agency agreement."

Question:

May a store or place of business, as an agent of a financial institution or a national bank, sell or issue registered checks or money orders without a license?

Answer:

Yes.

Reason:

A portion of P. L. 1963, chapter 176, which enacted chapter 59, section 199-A, states:

"Financial institutions as defined by section 1-B, subsection IV, and national banking associations may engage directly in the business of selling, issuing or registering checks or money orders. No person other than the foregoing shall engage in such business directly or indirectly unless he files with the commissioner on or before January 15th in each year a sworn statement setting forth his name and address, the names and addresses of his agents, other than a financial institution or national banking association"

The above-quoted portion of the statutes clearly sets forth the exemption of financial institutions and national banking associations from the purview of the law. It even allows such organizations to be an agent without licensing.

The wording of the statute can be interpreted in no other way than that such organizations may have agents selling or issuing registered checks or money orders. It follows, logically, that all checks or money orders issued by such agents should clearly show on their face that they are issued by an agent of the financial institution or national banking association. This does not preclude the agent from having his name and address on the instrument but does mean that the relationship must be clearly shown.

It should be further pointed out that any advertising by the agent should clearly indicate his relationship to the financial institution or national banking association.

We cannot legislate, nor interpret into the statute, provisions not included by the legislature. Neither can you, as commissioner, require anyone to do anything not required by the law. It would make enforcement of the statute more simple if it did require all agents to be listed in the records of the Banking Department.

Perhaps an agreement can be worked out with the financial institutions or national banking associations to keep you informed of their agents and any changes.

GEORGE C. WEST

Deputy Attorney General