

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

"The statute exempts certain property of the 'debtor' and does not limit the exemption to the property of a citizen"
Everett v. Herrin, supra.

Clear legislative intent to limit exemptions can be found in other sections of the Sales and Use Tax Law (see discussion above re exemption of municipalities, etc.) and in other Maine statutes.

Such an intent is spelled out in R. S. Chapter 91-A, section 10, II. These provisions are property tax provisions but are nonetheless expressive of clear legislative intent providing:

"The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions *incorporated by this State*, and none of these shall be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation of the classes of persons for whose benefit such funds are applied No such institution shall be entitled to tax exemption if it is in fact conducted or operated principally *for the benefit of persons who are not residents of Maine*. . . ." (Emphasis supplied).

Noting that there is no restrictive language in the exemption, the cases above cited, the probable impact of the above cited Maine case and other statutory expressions of legislative intent, I conclude that the exemption applies as well to "schools" not existing or incorporated in Maine.

JON R. DOYLE

Assistant Attorney General

March 17, 1964

To: Irl E. Withee, Deputy Commissioner, Banks and Banking

Re: Purchase of Assets of Small Loan Company by Industrial Bank

Facts:

A recently organized industrial bank seeks approval of the Department of Banks and Banking to purchase the assets of a small loan company licensed and operating under R. S., c. 59, secs. 210-227, as amended. The small loan company and the industrial bank are controlled by the same corporation. It is the intent of the industrial bank, if purchase of the assets is allowed, to notify the borrowers of the small loan company of the purchase and to encourage them to refinance their loans with the industrial bank; and to segregate and then liquidate, as rapidly as possible, the existing loans of the small loan company.

Question No. 1:

Can purchase of the assets of the small loan company be made by the industrial bank?

Answer:

Yes, with qualifications.

Opinion No. 1:

Pertinent sections and portions of sections of R. S., c. 59 are quoted:

"Sec. 202. Government — Except as herein otherwise provided, such corporations shall be governed and conducted in the manner

provided by law for corporations, generally insofar as not inconsistent with the provisions of sections 200 to 208, inclusive."

"Sec. 205. Powers — In addition to the powers conferred upon corporations by the general corporation law, . . . "

Reading these sections together it is apparent that an industrial bank has general corporate powers and may properly exercise these powers insofar as they are not inconsistent with the provisions of R. S., c. 59, sections 200 to 208, inclusive.

R. S., c. 53, sec. 19, which is one of the sections dealing with the powers conferred upon corporations by the general corporate law, reads in part:

"Any corporation may purchase mines manufactories and other property necessary for its business . . . "

The purchase of assets necessary for the industrial bank's business is legally authorized, subject of course to consistency with sections 200 to 208, inclusive.

R. S., c. 59, secs. 210 to 227, inclusive, deal with the licensing and operation of small loan companies. Section 225 reads as follows:

"Exceptions. — Sections 210 to 227, inclusive, *shall not apply to* any person, copartnership or corporation doing business under any law of this State or of the United States relating to national banks, savings banks, *industrial banks*, trust companies or loan and building associations." (Emphasis added).

Any restrictions on sale of the assets by the small loan company would appear not to apply to those specifically excepted by c. 59, sec. 225.

Question No. 2:

When an industrial bank purchases the assets of a small loan company what limitations as to the assets purchased and their use must be made, including the rate of interest that may be charged?

Opinion No. 2:

As noted in Opinion No. 1, the purchase of the assets cannot be inconsistent with c. 59, sections 200 to 208, inclusive. It is essential that the assets which are purchased are not used in a manner contrary to these sections.

The corporate powers of an industrial bank are set out in R. S. 1954, c. 59, sec. 205. This section reads in part:

"Sec. 205. Powers — In addition to the powers conferred upon corporations by the general corporations laws every industrial bank shall have the following powers:

. . . .

V. To purchase, invest in, hold and sell such notes, bonds and securities as are legal for investments of deposits in savings banks.

. . . . "

Under subsection V quoted above a very definite limitation is placed upon notes which may be purchased by industrial banks. These notes must be legal investments for savings banks.

R. S., c. 59, sec. 19-I, as amended, provides the legal authorization for the investment of funds of savings banks in securities. Therefore, this section also establishes the legal authorization for investment of funds of industrial banks in securities as provided by R. S. 1954, c. 59, sec. 205, sub-

section V. Only in subsections XVIII and XIX of R. S. 1954, c. 59, sec. 19-I, as amended, does there appear to be some authorization for investment in the notes of a small loan company. These subsections read as follows:

"XVIII. Securities approved by bank commissioners. In such securities as may be approved as suitable investments for savings banks by the bank commissioner provided he has received a written recommendation of such securities from a special committee of the savings banks association of Maine appointed or elected for such purpose.

Not more than 5% of the deposits of a bank shall be invested in securities coming within the coverage of this subsection."

"XIX. Other securities. In such other securities as the trustees of a bank may consider to be sound prudent investments.

Not more than 5% of the deposits of a bank shall be invested in securities within the coverage of this subsection."

All of the provisions of the above quoted subsections must be complied with including the percentage restriction as to the amount which may be invested.

Provided the investment is a legal investment as authorized by c. 59, sec. 205 when read in conjunction with c. 59, sec. 19-I, as amended, there are still further restrictions on the purchase of the notes of the small loan company.

Chapter 59, section 205, reads in part:

"Powers. — In addition to the powers conferred upon corporations by the general corporation law, every industrial bank shall have the following powers:

"I. To borrow money, to lend money and discount notes and bills of exchange, including trade acceptances, and to deduct interest thereon in advance at a rate no greater than 12% annually; . . .
" "

There is stated in the above quoted section a definite limitation on the rate of interest that may be charged on loans by industrial banks.

The amount of interest on loans which can be legally charged by a properly licensed small loan company is found in c. 59, sec. 217 which reads in part:

"Amount of loan and rate of interest. — Every person, copartnership and corporation licensed under the provisions of sections 210 to 227, inclusive, may loan any sum of money, goods or choses in action not exceeding in amount or value the sum of \$2,500, any lower limitation of amount in its charter notwithstanding, and may charge, contract for and receive thereon interest at a rate not to exceed 3% per month on that part of the unpaid principal balance of any loan not in excess of \$150, 2½% per month on that part of the unpaid principal balance in excess of \$150, but not exceeding \$300, and 1½% per month on any remainder of such unpaid principal balance; provided, however, that a minimum charge of not exceeding 25c shall be allowable in all cases.
" "

From a reading of this section it is clear that a small loan company has the legal authority to make loans exceeding a 12% annual rate. It is fair to assume that the existing loans of the small loan company in question exceed the 12% annual rate limitation placed on industrial banks. Notwithstanding that the notice is given to the borrowers of the small loan company and encouragement given to them to refinance the loans with the industrial bank, and even though those loans which are not refinanced are segregated and liquidated as rapidly as possible, the rate of interest received by the industrial banks on these segregated assets undoubtedly would exceed the 12% annual limitation established by c. 59, sec. 205, part 1 and would be manifestly in conflict with the power given to industrial banks.

When those assets which represent the existing small loans are sold to the industrial bank, said bank must immediately reduce interest charges so as not to receive interest payments that exceed the statutory limitation of 12% per annum.

It is also noted that c. 59, sec. 206-II states:

"No industrial bank shall:

....

"II. Make any loans for a longer period than two years from the date thereof, except in the case of loans that are eligible for insurance under the National Housing Act and for the insurance of which under that Act, seasonable application is made pursuant to the provisions of Title I of the National Housing Act.

...."

This is an additional limitation on the assets which may be purchased. This section is construed to mean that any existing small loan which has more than two years to run cannot be purchased by the industrial bank unless it meets the pertinent requirements of the National Housing Act.

JEROME S. MATUS

Assistant Attorney General

March 18, 1964

To: L. H. Stanley, Director, Civil Defense & Public Safety

Re: County Commissioners' Responsibility for Civil Defense and Public Safety in Unorganized Territories

Facts:

The Civil Defense Director for Oxford County has asked for a clarification of that portion of R. S. 1954, c. 12, sec. 9, as amended, which states "counties shall have concurrent responsibilities for civil defense and public safety in the unorganized territories within the respective counties."

Question No. 1:

Do county commissioners have full responsibility for civil defense and public safety in unorganized territories pursuant to R. S. 1954, c. 12, sec. 9, as amended?

Answer No. 1:

Yes, but not exclusive and final responsibility.