

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

September 18, 1964

To: Philip R. Gingrow, Director, Personal and Consumer Finance

Re: Loans by Mail Made by Small Loan Licensees Within the State

Facts:

In May of 1964 you asked this office for an opinion on the general question of small loan licensees making loans by mail. On May 27, 1964, this office answered your question in an opinion stating that such practice was not permitted by the small loan law.

Since that opinion, one of the larger small loan licensees has submitted to you a memorandum of law opposing that position. The licensee has requested that this office reconsider its opinion as it relates to small loans made by small loan licensees to residents of the State.

Question:

May small loan licensees of the State of Maine make loans by mail to residents of the State within the State?

Answer:

Yes.

Opinion:

Basically, the reason for the question is Ch. 59, § 213, which provides in the first sentence:

"No person, copartnership or corporation licensed under the provisions of section 211 shall make any loan or transact any business provided for by sections 210 to 227, inclusive, under any other name or at any other place of business than that named in the license." (Emphasis supplied).

The memorandum of law submitted in support of the proposition that loans by mail are legal, cites in general, three reasons for its position.

First, neither the Maine law nor the Bank Commissioner specifically precludes the making of loans by mail.

Second, loans by mail do not violate the public policy behind the small loan law.

Third, loans by mail are permitted in other states with similar legislation.

It must be admitted that the Maine Small Loan Statute does not contain any language specifically permitting or prohibiting the making of loans by mail. The statute is quite silent on the matter.

Whether the Bank Commissioner has "long been aware of the practice" does not seem to be borne out by the fact that an inquiry dated May 12, 1964, from a small loan licensee caused the question to be referred to this office. This resulted in the opinion of May 27, 1964. The Bank Commissioner accepted this opinion and acted so that the present controversy arose.

The memorandum of law then goes into the matter of general Maine law and concludes that loans by mail are consummated at the office of the licensee. The theory presented is that the filing of application by a borrower is an offer and that the licensee accepts the offer by approving the loan and mailing the check.

We do not disagree with the theory of law but with its application to the facts. We believe that the mailing of an application and note by a

licensee constitutes an offer to loan a specified sum of money at a specified rate of payment. This offer is accepted by the borrower when he signs the note, completes the application and mails it to the licensee. The sending of the check is the first step on the part of the licensee in the performance of the contract. Hence, it would appear that the contract is executed at the place where the note is signed.

The second argument is concerned with the public policy on which the small loan law is based. There can be no serious quarrel with the arguments advanced on this phase as long as loans are confined to so-called "intrastate" transactions. There can be no doubt that the fundamental theory of the small loan law is of a remedial nature. Generally, remedial statutes are liberally construed. A liberal construction of the Maine Small Loan Law would authorize intrastate loans by mail.

The third argument that other states have interpreted similar laws to allow such transactions is entitled to some weight. Such interpretations may well be considered as legal precedents.

To say that loans must be made in the office of a licensee is straining the language of section 213. One cannot overlook another portion of that section. There is the wording "or transact any business," etc. To look at this realistically, we have to recognize that a small loan company must occasionally go to the home or place of employment of a borrower to collect payments. At times it may be necessary to repossess collateral. This is done where the collateral is located.

It is obvious that the law must contemplate the transaction of certain phases of business outside the confines of the company's office. This being so, it must be said that the making of a loan by mail is not prohibited. To say otherwise would strain the wording of the statute.

To the extent that this opinion states that "intrastate" loans by mail to Maine residents by Maine licensees is permissible, the previous opinion of May 27, 1964, is superseded.

GEORGE C. WEST
Deputy Attorney General

September 25, 1964

To: Ernest H. Johnson, State Tax Assessor

Re: R. S., Chapter 17, section 2, definition of "storage" and "storage" or "use"

Facts:

Pioneer Plastics Corporation purchases from out-of-state printers certain advertising and promotional materials and pamphlets. These are then shipped by the printers to Pioneer Plastics Corporation in Sanford. From Sanford, these materials are shipped out to various distributors and retail dealers which handle products of Pioneer Plastics Corporation.

The corporation contends that the purchase of these materials is not subject to use tax in Maine because the materials are "brought into this State for the purpose of subsequently transporting (them) outside the state" and hence come within the exclusion in section 2 of the law.