

MAINE STATE LEGISLATURE

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YLS ✓
March 22, 1966

David Garceau, Commissioner

Banks and Banking

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Participation in Loans by Savings Banks

FACTS:

A savings bank is offered a participation in a Small Business Administration guaranteed loan which is not a mortgage on real estate. There is an apparent conflict between 9 M.R.S.A. § 551, 1, C., and § 554.

QUESTION NO. 1.

Under which section, if either, may a savings bank properly participate in a loan covered by an S.B.A. guaranty up to 90%?

ANSWER NO. 1.

Section 551, 1, C.

OPINION NO. 1.

Section 551, 1, reads in part:

"C. Without regard to any other law, savings banks of this State are authorized to make or buy and sell any loan, secured or unsecured, or any real estate installment sale contract, which is insured or guaranteed in any manner in part or in full by the United States or any instrumentality thereof"

In other words, a savings bank may make, buy or sell any loan, secured or unsecured, as long as the loan is insured or guaranteed in part or in full by the United States or any instrumentality thereof. The Small Business Administration is an instrumentality of the United States. Hence the loan, be it participation or otherwise, may be made by a savings bank.

Section 554 reads in part:

"A savings bank may purchase participations in term loans other than real estate, secured or unsecured, from national banks or trust companies located in the State,

the proceeds of which are to be used in the establishing or carrying on of a business venture of any kind located principally within this State, "

The portion of § 554 limits savings banks to:

1. Purchasing participations in

- (a) Term loans
- (b) Other than real estate
- (c) From national bank or trust companies located in Maine
- (d) Proceeds of the loans must be to establish or carry on business ventures located principally in Maine.

Unless the loans come within the limits set forth above, a savings bank may not participate. Such loans do not have to be insured or guaranteed by the United States or the State. (It should be noted that subsections 1, 2, and 3, impose additional limitations not necessarily pertinent to this question.)

Hence, it may be stated that when the loan is insured or guaranteed by the United States, or the State of Maine or any instrumentality thereof, a savings bank may make or buy and sell such loan, the authority being § 551, 1, C.

QUESTION NO. 2.

Can a savings bank properly originate and hold an entire loan with a Small Business Administration guaranty on a non-real estate mortgage basis under 9 M.R.S.A., § 551, 1, C?

ANSWER NO. 2.

Yes.

OPINION NO. 2.

See Opinion No. 1 for reasons.

QUESTION NO. 3.

If a savings bank participates or originates and holds a Small Business Administration guaranteed loan, which may be secured by a

combination of collateral, i.e., real estate, chattels, leases, etc., is such a loan or participation to be included in § 551, 1, E, as relates to percentage of loans to deposits?

ANSWER NO. 3.

See Opinion.

OPINION NO. 3.

Section 551, generally, permits a savings bank to loan on a first mortgage of real estate. There is no authorization for second mortgages. Quite unfortunately, subsections 1, C and part of E, were placed within section 551. Paragraph C and that part of paragraph E relating to guaranteed loans, could be better understood if they were a separate section. They should be so interpreted.

There can be no question that a loan secured only by real estate, and guaranteed, must be considered in relation to § 551, 1, E. When there is no real estate as security, although guaranteed, § 551, 1, E, does not apply.

A loan secured by a combination of various types of collateral, including a real estate mortgage, presents a problem. However, banking practice being what it is, we must rely on it to a certain extent. When real estate is involved as security for a loan, an appraisal of the value of the real estate is or should be made. The bank then has a knowledge of the value of the real estate. With this knowledge, the bank can determine the percentage of the loan secured by the real estate. This percentage should be used to add to other real estate mortgages in determining the percentage of loans to deposits.

QUESTION NO. 4.

What conflict, if any, may we look for in carrying out the provisions of 9 M.R.S.A., § 551, 1, C and E, and § 554?

ANSWER NO. 4.

None.

David Garceau, Commissioner

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OPINION NO. 4.

Section 551, 1, C, applies to any loan insured or guaranteed by the United States or the State of Maine or any instrumentality thereof.

Section 554 applies to the purchase of participations in certain specified and limited loans, not insured or guaranteed as stated in § 551, 1, C.

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