MAINE STATE LEGISLATURE

The following document is provided by the

LAW AND LEGISLATIVE DIGITAL LIBRARY

at the Maine State Law and Legislative Reference Library

http://legislature.maine.gov/lawlib

Reproduced from scanned originals with text recognition applied

(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

"§2381. Unlawful acts

"No industrial bank shall:

"...

"2. Loan limitations; 3-year limit. Make any loan for a longer period than 3 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 National Housing Act, Title I;"

Thus it is clear that the Maine Legislature has placed a three-year limitation on the period of time assets of an industrial bank can be placed at risk in the form of a loan to the borrower. (Except in the cases of loans that are eligible for insurance under the National Housing Act for the insurance of which seasonable application is made under that Act.)

A renewal either in full or in part of a three-year loan by an industrial bank beyond a three-year period from the original making of the loan would effectively place at risk assets of the industrial bank beyond a three-year period. The extension of a payment or payments on a three-year loan beyond the maturity date of the loan would have the same effect. Thus, in our opinion, a renewal or extension of a loan by an industrial bank beyond a three-year period would abrogate the provision of 9 M.R.S.A. 2381, subsection 2, as amended by P. L. 1965, chapter 454 and be unlawful.

JEROME S. MATUS
Assistant Attorney General

August 17, 1967
Banks and Banking

Irl E. Withee, Deputy Commissioner

Addendum to Opinion of June 15, 1967.

A request has been made for a clarification of my opinion dated June 15, 1967 relating to the 3-year loan limitation of industrial banks. My opinion is unchanged. However, in respect to my answer to Question No. 1, it is necessary to establish what is meant by the word "renewal". The word "renewal" when applied to a note means the continuance of the old obligation, including the obligation of all parties liable thereon. Sproul v. Beskin, 166 N.Y.S. 606, 608, 179 App. Div. 275. If a note is renewed by an industrial bank beyond the 3-year limitation, the loan is in violation of 9 M.R.S.A. § 2381 (2). However, if a note is marked paid and returned to the borrower and an obligation in the form of a new note is entered into between the same borrower and the same industrial bank, we have a novation at law, i.e., an entirely new obligation. See *Seaboard Finance Company v. Schaefer, et ux,* [69 D.&C. 147 (1949) Pa.]. In *Beneficial Finance Company (Maine) v. John C. Fusco,* 160 Me. 273 (1964), there was a contention of a violation of the small loan statute prohibiting compounding of interest. The Maine Supreme Court upheld the opposite contention of the finance company that when the parties executed a note for the purpose of the defendant borrowing additional money and paying off the original note, the unpaid accrued interest became transferred into principal in the new note. Although the *Beneficial Finance Company* case, supra, related to compounding of interest under our small loan law, I am of the opinion that the same rationale would be applied to the question of whether or not there is a violation of the 3-year loan limitation by industrial banks established in 9 M.R.S.A. §

2381 (2); and that if a new note is executed between a borrower and an industrial bank at the end of a 3-year period, the new note is a separate obligation and is not a "renewal" in a legal sense.

My answer to Question No. 2 needs very little clarification. The word "extension" or "to extend" can be used interchangeably with "renewal" or "to renew". *Appon v. Belle Isle Corp.,* 46 A. 2d 749, 29 Del. C.H. 122. If a note is "extended" beyond the original 3-year period, it is in violation of 9 M.R.S.A. § 2381 (2).

JEROME S. MATUS
Assistant Attorney General

June 23, 1967
Parks and Recreation

Charles P. Bradford,
Supervisor of Historic Sites

Ownership of the Wreck of the Angel Gabriel.

FACTS:

An amateur diver has been researching in the New York City library the wreck of the Angel Gabriel of Pemaquid of the early settlement.

Should he locate it, he would donate the artifacts, if they are his, to either the State of Maine or the Pemaquid restoration.

QUESTION:

Should the amateur diver or anyone else locate the wreck, to whom does the wreck and its contents belong?

ANSWER:

The State of Maine.

OPINION:

The wreck and contents of Angel Gabriel would be derelict. A vessel is derelict in the maritime sense of the word when it is abandoned without hope of recovery or without intention of returning to save it. *Merrill v. Fisher,* 91 N.E. 132 at 133, 204 Mass. 600. For other definitions of the term derelict, see *12 Words and Phrases, p. 308 to 310.* A derelict is subject to salvage and either a vessel or its cargo may be derelict. It has been laid down in general terms that to constitute a derelict in the maritime law in respect of salvage, it is necessary, and according to some cases, sufficient, that the thing is found deserted or abandoned on the seas whether it arose from accident or necessity or voluntary dereliction. *78 C.J.S., Salvage, § 30, p. 501.*

We assume, for purposes of this opinion, that the Angel Gabriel is lying within three miles of the coastline of the State of Maine. This being so, the wrecked vessel would be lying within the territorial waters of the State of Maine. The Submerged Land Act of 1953 provides in part that:

"The seaward boundary of each original coastal State is approved and