STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

national banks, in view of the liberalization of the federal statute?

2. If the answer to question No. 1 is in the affirmative, then would the repeal of the Bank Stock Tax automatically subject national banks to the Maine Corporate Income Tax Law?

ANSWERS:

1. Yes.
2. No.

REASONS:

1. Section 1 of H.R. 7491 permits, for the period between the date of enactment and January 1, 1972, the imposition of any new tax on national banks. However, the "limitations and restrictions" which are specifically set forth in 12 U.S.C.A. ◊ 548 (1) are incorporated by reference into section 1 of H.R. 7491. Thus, a choice must be made between the Bank Stock Tax and the Maine corporate income tax. It should be noted that § 548 (c) permits Maine to impose an individual income tax, in addition to the corporate income tax, upon dividends received by Maine shareholders from national banks.

2. The repeal of the Bank Stock Tax would not automatically subject National Banks to the Maine Corporate Income tax. Section 3 (a) (2) of H.R. 7491 is a saving provision which permits a legislature, by affirmative action, to impose a new tax, ie: the Maine corporate income tax. However, the Bank Stock Tax would have to be repealed. Section 3 (a) (2) states in part:

> " . . . prior to January 1, 1972, no tax may be imposed on any class of banks by or under authority of any state legislation in effect prior to the enactment of this Act unless the imposition of the tax is authorized by affirmative action of the State legislature after the enactment of this Act."

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January 12, 1970
Environmental Improvement Comm.

William R. Adams, Director

License requirements – private outfalls; municipal sewers

SYLLABUS:

A municipality need not apply for a waste discharge license under 38 M.R.S.A. §413 where it proposes only to collect and discharge, through a municipal sewer, sewage in like quantity as was previously discharged through privately owned outfalls. 1961-62 Ops. Attorney General 162 reaffirmed.

FACTS:

For an unspecified number of years prior to 1965, but at least as far back as September 1, 1959 sewage from a number of buildings was discharged through six

privately owned outfalls to tidal waters. In 1965 the municipality in which the buildings are located acquired the land between the buildings and the tidal waters and constructed a sewer line to which the private outfalls were connected. The municipality does not treat the sewage prior to its entry into the tidal waters.

The classification of the tidal waters at the point of discharge was, in 1965, SC. 38 M.R.S.A. § 370 (1964) – *Lincoln County,* 916, sub- § B. In 1967 the classification was raised to SB-2 Me. Public Laws 1967, c. 324, § 24. An individual proposes purchasing one of the subject buildings.

QUESTIONS:

1. If the individual purchases the building, must he apply for a waste discharge license?
2. Should the town have applied for a waste discharge license in 1965, and should it apply for one now?

ANSWERS:

1. No.
2. No, in either case, unless the amount of sewage discharged, or the composition of the discharge, has changed so as to constitute a "new source of pollution" within the meaning of 38 M.R.S.A. § 413.

REASON:

1. Since the sewage from the building does not enter the tidal waters through a private outfall, but rather through a sewer line owned and maintained by the municipality, the owner of the building and his successors in title need no discharge license. 1961-62 Ops. Attorney General 162.
2. 38 M.R.S.A. § 413, as amended, provides in pertinent part:

> "No . . . municipality . . . shall discharge into any . . . tidal waters . . . any sewage so as to constitute a *new source of pollution to said waters* without first obtaining a license from the commission." (Emphasis supplied.)

We assume from the facts supplied that the sewage discharge from the private outfalls has remained at substantially the same volume at all times pertinent hereto. Accordingly, such discharge does not constitute a "new source of pollution" to the receiving body of water within the meaning of Section 413. It is rather an existing source of pollution which is finding its way to the waters in a new manner.

Any increase in the amount of sewage discharged, any connection to the municipal sewers of new sources of sewage (as, for example, a newly constructed house), or any change in the composition of the discharge which would, unless treated, violate the existing SC classification of the receiving waters, would constitute a "new source of pollution" and would necessitate application by the municipality for a license. *Cf.* opinion of this office dated December 29, 1967.

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