

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

months after the effective date of the act, which was October 1, 1969. This allowed applications to be made up to April 1, 1970. The Board, however, in about mid-January of 1970 promulgated the offending regulations and saw to it that some ninety social worker organizations and associations were furnished with copies thereof. This action by the Board has undoubtedly prevented an unknown number of persons from seeking certification.

It is suggested, therefore, that the Board review all applications made but rejected because the applicants lacked the required degree. If all other qualifications were met, these persons should be certified without delay. As to those unknown persons who might have applied, but did not, they cannot legally be considered under the statute as it now stands.

The Board might well consider going to the 105th Legislature with a request for relief, perhaps in the form of a new grandfather clause which would encompass those persons reasonably intended to be encompassed, keeping in mind the obvious problem of determining who these people might be. This clause should also encompass those applicants who will now be certified as a result of this opinion, thereby removing any lingering doubt as to the legality of their certification.

One more problem faces the Board and that is contained in the last words of the first sentence of section 4182. They provide for certification "as a registered or associate social worker without examination," but give no guideline as to how the Board should determine which type social worker a given applicant should be. It would then appear that the Board has broad discretion to set up its regulations relating to this subject so long as it certifies qualifying applicants as one or the other. It could, it would seem, require that applicants under this section must have a Masters or Bachelors Degree to become a registered social worker leaving all those without such qualifications to be associate social workers. This is a suggestion merely, but should provide a guide to the Board in setting up its regulations.

KEITH N. EDGERLY
Assistant Attorney General

August 17, 1970
State

Joseph T. Edgar, Secretary of State

Required Filing of Affidavit by Foreign Corporations

SYLLABUS:

A foreign corporation having power to loan money in its state of incorporation may not utilize that power in Maine upon registration with the office of the Secretary of State. Such a corporation is a bank under Maine law and must forego the power to loan money in Maine.

FACTS:

A foreign corporation has registered with the Secretary of State to do business in Maine. At the time of registration it was empowered under the laws of the state of incorporation to loan money for profit. At the request of the Secretary of State affidavits stating it would not loan money nor engage in any activity prohibited by

Maine law were filed. The corporation now wishes to engage in the business of loaning money in Maine and seeks to withdraw the affidavits or file appropriate papers to nullify the filed affidavits.

QUESTION:

Can the Secretary of State permit the withdrawal or nullification of the filed affidavit so that the foreign corporation may engage in the business of loaning money in the State of Maine?

ANSWER:

No.

REASON:

A foreign corporation, other than certain named businesses, doing business in Maine must register with the Secretary of State. 13 M.R.S.A. § 591. Among the businesses not required to so register are a bank, savings bank and trust company.

The charter or certificate of organization of the reference foreign corporation simply states that the persons have "associated ourselves together for the purpose of forming an investment company under and pursuant to the Banking Law of the State of New York." The Banking Law of the State of New York authorizes a corporation formed thereunder to loan money for profit.

The loaning of money for profit by a corporation, except as a reasonable incident to the transaction of other corporate business, or when necessary to prevent corporate funds from being unproductive, is banking business. 9 M.R.S.A. § 222 subsection 1, Paragraph B. A corporation which engages in the banking business must be considered a bank. Black's Law Dictionary, Fourth Edition, page 184.

The subject corporation is a bank under the law of the state of its incorporation. Hence, if it performs one of its functions of loaning money in Maine, it is a bank. As such it may not appoint an attorney for service of process under 13 M.R.S.A. § 591. It may not file with the Secretary of State a copy of its charter or certificate of organization. See § 592.

Some controversy exists as to the meaning and extent of the section 593, which states:

"The Secretary of State shall refuse to accept or file the charter, certificate or other papers of, or accept appointment as attorney for service for, any such corporation which does a business in this State, the transaction of which by domestic corporations is not then permitted by the laws of this State.

"When a foreign corporation otherwise qualifies under the laws of this State, but its charter contains purposes in conflict with the purposes permitted domestic corporations under the laws of this State, the Secretary of State shall accept or file certificates or other papers of such foreign corporation pursuant to section 592, if such foreign corporation files therewith a copy of a vote of either its stockholders or board of directors duly certified by the officer having charge of the original record, that such purposes in conflict with the laws of this State shall not be exercised by the foreign corporation in the course of doing business within this State, and that such foreign corporation so admitted or qualified shall not thereafter transact in this State any business which a corporation organized under

the laws of this State is not permitted to transact.”

The subject corporation claims that the loaning of money is a business permitted domestic corporations by the laws of the State. With such a statement we cannot disagree. See 9 M.R.S.A. § 991 et seq. (trust companies); § 3201 et seq. (loan companies).

However, we must construe § 593 in connection with and in harmonious accord with § §591 and 592. Section 593 cannot stand alone. It would not make sense to interpret the language literally and contrary to the two preceding sections. These three sections set up an arranged plan whereby corporations organized in other States may do business in Maine and by appointment of an attorney for service of process be subjected to the jurisdiction of the Maine courts. Certain corporations, as listed in § 591, are not granted this privilege. Among these are banks.

We must, therefore, interpret § 593 as referring only to those types of corporations that are specifically exempted by § 591 from filing with the Secretary of State.

GEORGE C. WEST
Deputy Attorney General

August 18, 1970
Education

Kermit S. Nickerson, Commissioner

SYLLABUS:

Requirement of federal law that Department of Education supervise the administration of State plan for education of handicapped children creates limitation restricting transfer of federally purchased equipment and materials from State College to University of Maine under P. & S. L. 1967, Chapter 229, § 4-C.

FACTS:

Under Title VI-A, Elementary and Secondary Education Act (20 USCA §§871 – 877) the Department of Education is the State agency for administration of that Title concerned with special education for handicapped children. The federal law requires that the Department of Education file with the federal agency a State Plan under which it will operate. The Department of Education did this and the plan has been approved by the federal agency.

Equipment, material and supplies may be purchased with the federal funds granted to the State. Title to such property must remain in a public agency.

“The (State) plan must provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property.” 20 USCA § 874 (c).

The former Farmington State College, now the University of Maine at Farmington, was designated by the State Department of Education as a Special Education Instructional Materials Center. At that time, the State Board of Education supervised Farmington State College. Equipment, materials and supplies were purchased by the State Department of Education with Federal funds. The Special Education Instructional Materials Center could well be said to be a type of warehouse and distribution center or a library for the storage and loaning out of materials to be used in the education of