STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

service between certain islands and the mainland while it is imposed with the more general duty of " . . . securing and maintaining adequate ferry transportation for persons . . . . between the mainland and the Islands in Casco Bay . . . .". 1959 Priv. & Spec. ch. 79 Sec. 2.

This latter duty of the Authority may include providing and conducting the service, itself, if the Public Utilities Commission determines that the ferry service cannot be provided by private operators.

In conclusion, if the Maine Port Authority wishes to provide ferry service to islands in Casco Bay, other than North Haven, Vinalhaven, Islesboro, Swan's Island, and Long Island Plantation, it may do so provided that they are located within the limits of the City of Portland and the Town of Cumberland and provided further that the Public Utilities Commission has determined that ferry service by private operators, if any, is not longer feasible.

CLAYTON N. HOWARD
Assistant Attorney General

November 24, 1970
Banks and Banking

Elmer W. Campbell, Commissioner

Permitted charges under 9 M.R.S.A. Section 229

SYLLABUS:

Charges for credit insurance made in connection with a loan governed by 9 M.R.S.A. § 229 are not to be added to the other loan charges in determining whether the loan charges are in excess of the maximum interest permitted for loans in excess of $2000 if such insurance charges are within the scope of 24-A M.R.S.A. Section 2861.

FACTS:

A loan company is engaged in loaning funds which are subject to 9 M.R.S.A. § 229. Section 229 prohibits the company from charging more than 16% per year, simple interest on its loans. In conjunction with its loans the loan company is also charging for credit insurance which is issued through it to its debtors. The loan company is not including the credit insurance charges in its calculation of annual interest charges for the purpose of determining compliance with 9 M.R.S.A. § 229.

QUESTION:

Do charges for credit insurance issued through a creditor for a debtor constitute a charge which is to be included in calculating the interest rate for purposes of determining whether the rate charged exceeds the maximum chargeable under 9 M.R.S.A. § 229?

ANSWER:

No, with the exceptions indicated below.

REASONS:

The pertinent statute provides as follows:

"No person, co-partnership or corporation shall, directly or indirectly, charge, contract for or receive any interest or consideration greater than 16% per year simple interest upon the nonbusiness or personal loan, use or forebearance of money, goods or choses in action, or upon the nonbusiness or personal loan use or sale of credit, of the amount or value in excess of $2,000. . . ." *9 M.R.S.A. § 229.*

The question to be resolved is whether the above quoted prohibitory language would prohibit a creditor from charging a debtor for credit insurance when such additional charge would, when added to the other loan charges, exceed the 16% maximum. Standing alone the above language would appear to prohibit such additional charges. The Maine Legislature has, however, expressly addressed itself to the credit insurance issue, in this State's recently enacted Insurance Code. The loan laws and the insurance laws must be read together to determine the comprehensive scheme that was intended.

The Insurance Code expressly exempts certain premiums from the charges referred to in § 229 above. The Code provides that:

"1. The premium or cost of such insurance when issued through any creditor shall not be deemed interest, or charges, or considerations, or an amount in excess of permitted charges in connection with the loan or other credit transaction . . . . shall not be deemed a violation of any other law, general or special, of the State of Maine.

"2. The amount charged to a debtor for any credit life or credit health insurance shall not exceed the premiums charged by the insurer . . .". 24-A M.R.S.A. § 2861.

However, it should be noted that consequently, if the Insurance Code expressly or impliedly exempts certain premium charges from its coverage so that the above provision does not apply, then they would have to be included as charges under § 229 of the loan laws.

Instances where the insurance code expressly *does not* immunize the credit insurance charges are spelled out in 24-A M.R.S.A. §2851. Section 2851 provides that:

"All life insurance and all health insurance in connection with loans or other credit transactions shall be subject to this chapter, *except such insurance in connection with a loan or other credit transaction of more than 5 years duration or issued in an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.*" (Italics added).

An additional instance where the Credit Insurance Law would be implied as not exempting the creditor from the maximum interest limitation would be a situation where the creditor is in substance and effect also the insurer. See, e.g. *Cope v. Aetna Finance Company of Maine,* 412 F.2d 635 (1969).

If a creditor is in substance and effect an instrumentality of the insurer, as it was in the *Cope* case, the insurance would not be considered as being "issued *through* any creditor" as contemplated by subsection 1 of section 2861, supra.

In conclusion, the charges for credit insurance are not to be included in the calculations for determining the maximum interest permissible under 9 M.R.S.A. §229 if such charges are within the scope of 24-A M.R.S.A. § 2861.

Charges should not however be considered as exempt from §229 if the creditor is in substance the insurer, or comes within the exception of 24-A M.R.S.A. §2851.

CLAYTON N. HOWARD
Assistant Attorney General