

# MAINE STATE LEGISLATURE

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*Ben* *JS* 11  
June 2, 1972

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SYLLABUS:

License agreements between corporations for use of an assumed name are not required to be filed with the Secretary of State.

Multiple corporations seeking to use same assumed name must grant each other permission by action of the board of directors.

FACTS:

You have had presented to you four Statements of Intention To Do Business Under An Assumed Name. Each of four corporations, namely:

Shop Rite Super Markets, Inc.  
Bucksport Shop N' Save, Inc.  
Ellsworth Shop N' Save, Inc.  
S 'N & Stores

seek to use "Doug's Shop 'N Save" as an assumed name. The first named corporation is a parent of the other three wholly-owned subsidiaries. There is in active existence a wholly-owned subsidiary of Shop Rite Super Markets, Inc. by the name of Shop & Save Co., Inc.

Included with the 4 statements are (1) an original instrument entitled "Certificate" signed by the Clerk of Shop & Save Co., Inc., reciting a vote of the Board of Directors at a meeting called and held on January 11, 1961. This vote purported to authorize the named Treasurer to sell to Hannaford Bros. Co. all the rights of the corporation to the names "Shop & Save Inc"; "Shop & Save Co., Inc"; "Shop & Save"; "S & S" and all other combinations, spellings and variations of these names, conditioned upon his receiving a license to continue to use the corporate name and to use "S & S" and "Shop & Save" in its advertising. (2) Assignment dated February 13, 1961 by Shop & Save Co., Inc. to Hannaford Bros. Co. the right, title and interest to the trademarks and trade names

listed above. (3) License dated February 14, 1961 from Hannaford Bros. Co. to Shop Rite Super Markets, Inc. to use name "Shop 'N Save" at one retail outlet in Bangor. There is no indication as to who so authorized. The license is signed by the President of each corporation. (4) A Consent dated March (date illegible) 1972 whereby the License in (3) is expanded to 3 locations. (This Consent uses "Shop & Save" rather than "Shop 'N Save" though referring to the license dated February 14, 1961.) (5) License dated March 23, 1964 by Hannaford Bros. Co. to S 'N S Stores to use the name and mark "Shop 'N Save" in one retail outlet in Old Town. (No indication of who so authorized.) (6) License dated January 1, 1966 by Hannaford Bros. Co. to Bucksport Shop 'N Save, Inc. to use the name and mark "Shop 'N Save" in one retail outlet in Bucksport. (No indication of who so authorized.) (7) License dated February 21, 1966 by Hannaford Bros. Co. to Ellsworth Shop 'N Save, Inc. to use the name and mark "Shop 'N Save" in one retail outlet in Ellsworth. (No indication of who so authorized.)

QUESTION:

Are the above papers proper for filing by the Secretary of State?

ANSWER:

No. See Reasons.

REASONS:

13-A M.R.S.A. § 307 authorizes a domestic or foreign corporation to transact business under one or more assumed names upon compliance with the section.

First, there is no question but what "Doug's Shop 'N Save" is an assumed name. See § 307, sub-§ 1. Second, proper statements in accordance with sections 104 and 106 have been presented. See § 307, sub-§ 3.

Subsection 4 of § 307 states:

"Each assumed name must comply with the requirements of section 301, subsection 1, except for similarity with the true corporate name of the corporation proposing the use of such assumed name."

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So the real question is whether there is compliance with Section 301 subsection 1 and if not, what is necessary to comply. Section 301 subsection 1, paragraph A is not pertinent and so not considered. Only paragraph B is involved.

In its pertinent part § 301, sub-§ 1, P. B, reads:

"1. The corporate name:

B. Shall not be the same as, or deceptively similar to, . . . the assumed name of a corporation as provided for in section 307, unless such other corporation executes and files with the Secretary of State as provided in sections 104 and 106 proof of a resolution of its board of directors authorizing the use of a similar name by the corporation seeking to use such similar name."

The purpose of the cited provision is twofold (1) to protect a corporate or assumed name duly recorded by the Secretary of State from use by another corporation and, consequently (2) to lessen the possibilities of court actions seeking to prevent the use of similar names. The law allows a corporation, by vote of its board of directors, to grant to another corporation the right to use the same or a deceptively similar name as a corporate name or an assumed name.

In the instance here recited each of the four corporations seeking to use the same assumed name must not only file the Statement of Intention To Do Business Under An Assumed Name, but must also file a resolution of its board of directors allowing the other three corporations to use the assumed name.

The Secretary of State does not need to record the "Licenses" granted by Hannaford Bros. Co. They may be necessary as between the corporations, but they are not a necessary part of any recording required by Title 13-A.

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