

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Protection attach consequences should the Board fail to act within the time specified. Nor do such statutes indicate which, if any, result would be deemed to occur from a delay. One could just as easily assume that a delay constituted an approval as a disapproval of an application. We must conclude therefore that the time provisions in question are directory and not mandatory. Failure of the Board to issue an order or render a decision within the required statutory time period does not mean that the Board has either approved or disapproved of the application pending before it. The Board retains its authority to render a decision even though it did not act within the time period specified. It cannot be prevented from rendering or enforcing such decision. See e.g., *Liberty Mutual Ins. Co. v. Industrial Accident Commission*, 42 Cal. Rptr. 58 (1964); *Koehn v. State Board of Equalization*, 333 P.2d 125 (Cal. 1959); *Superior Oil Co. v. Foote*, 214 Miss. 857, 59 So.2d 85 (1952).

Having decided that a failure to act as promptly as directed is not fatal to the Board's jurisdiction, we must add a caveat. Failure to act as promptly as required could result in a party applying for and obtaining a mandatory injunction requiring the Board to act. Also such decision could be voidable for being based on a stale record. 2 *Am. Jur.2d*, Administrative Law, § 687. Absent particular facts, it is impossible to predict how long a delay would render a record stale and the evidence insufficient to support a determination. The Board would be well advised to avoid, to the maximum extent possible, any delay in meeting its statutory deadlines.

JOHN M. R. PATERSON
Assistant Attorney General

August 10, 1972
Banks & Banking

Robert A. Brown, Acting Bank Commissioner

Authority of Bank Commissioner to declare moratorium on formation of new banking institutions.

SYLLABUS:

The Maine Bank Commissioner does not have the authority to declare a general moratorium on the formation of new banking institutions in the State.

FACTS:

None.

QUESTIONS:

- (1) Does the Bank Commissioner have the authority to declare a general moratorium with regard to the formation of new banking institutions within the State of Maine?
- (2) Would such a moratorium prevent the formation of a financial institution by Federal charter?
- (3) Would such a moratorium be considered a "restraint of trade"?

ANSWERS:

- (1) No.
- (2) and (3). The answer to question 1 obviates answers to questions 2 and 3.

REASONS:

There appears to be no provision in the Maine Banking Laws (Title 9, Maine Revised Statutes) which gives to the Bank Commissioner the authority to declare, for whatever reason, a general statewide moratorium on the formation of new banking institutions.

CRAIG H. NELSON
Assistant Attorney General

August 11, 1972
Retirement

W. G. Blodgett, Assistant Executive Director

Retirement – Deduction of Workmen’s Compensation from Retirement Allowance of Participating Local District Employee.

SYLLABUS:

An occupational disability retirement allowance payment by the Maine State Retirement System to an employee of a participating local district cannot be reduced by the amount of the workmen’s compensation payment being made to such employee under coverage provided by that district.

FACTS:

A fireman was employed by the Town of Brunswick, which is a participating local district in the Maine State Retirement System. On February 21, 1971, the Maine State Retirement System granted him an occupational disability retirement allowance. The fireman also received an allowance of workmen’s compensation for that disability under coverage provided by the Town of Brunswick. The Maine State Retirement System reduced the retirement allowance payment by the amount of the workmen’s compensation payment which the fireman was receiving, on the assumption that such reduction was required by 5 M.R.S.A. § 1122, sub-section 5, when viewed in light of 5 M.R.S.A. § 1092, subsection 8.

QUESTION:

Whether an occupational disability retirement allowance payment by the Maine State Retirement System to an employee of a participating local district may be reduced by the amount of the workmen’s compensation payment being made to such employee under coverage being provided by the participating local district?

ANSWER:

No.