

MAINE STATE LEGISLATURE

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JSE ✓
August 22, 1972

Michael Kane

Executive

John W. Benoit, Jr., Deputy

Attorney General

Authority of Bank Commissioner, alone or under order of the Governor, to administratively institute a moratorium on the formation of new banking institutions.

SYLLABUS:

The Bank Commissioner, whether acting on his own prerogative or under order of the Governor, does not have the authority to institute, by a course of administrative action or otherwise, a general moratorium on the formation of new banking institutions in the State for a period of time during which a comprehensive study would be conducted concerning Maine's banks and banking laws.

FACTS:

The course of administrative action by the Bank Commissioner in carrying out the subject moratorium would be by way of his denying all applications for new bank formation without prejudice against resubmittal on the grounds of a pending study or his withholding or delaying action on all such applications until completion of a study of the Maine banks and Maine Banking Laws.

QUESTION:

Does the Bank Commissioner, either acting on his own prerogative or under order of the Governor have the authority to institute, by a course of administrative action or otherwise, a general moratorium on the formation of new banking institutions in the State for a period of time during which a comprehensive study would be conducted concerning Maine's banks and Banking Laws?

ANSWER:

No.

REASONS:

There appears to be no provision in the Maine Banking Laws (Title 9, Maine Revised Statutes), the Maine Revised Statutes, as a whole, or the Maine Constitution which specifically, or by implication, gives the Bank Commissioner, whether acting on his own prerogative or under order of the Governor, the authority to institute, by a course of administrative action as described in the foregoing facts or by declaration, a general moratorium on the formation of new banks in Maine during the period of time in which there would be conducted a comprehensive study of Maine's banks and Banking Laws. To do so would be, in fact, an attempt by

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executive action to stop or at least delay for a period of time a legitimate course of business activity. Without legislative restraint, banking institutions may be planned and notice of such given to the Commissioner. By law he must accept such notices. Whether or not he issues certificates of public convenience and advantage is discretionary-- but within the requirements of the law. He may not choose to issue any more certificates from the facts as ascertained; but he cannot administratively shut off applications or refuse to consider them.

JOHN W. BENOIT, JR.
Deputy Attorney General

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