

# MAINE STATE LEGISLATURE

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June 20, 1973

Robert A. Brown, Acting Commissioner

Banks and Banking

Martin L. Wilk, Assistant

Attorney General

Notification to borrowers under 9 M.R.S.A. § 3043

This will respond to your memorandum dated May 24, 1973 regarding the matter referred to above. For the reasons which follow, it is our opinion that 9 M.R.S.A. § 3043 requires notification that a violation has been found only to those borrowers whose loans are found at a formal hearing to have been made in violation of the statutory prohibitions, and not to borrowers where loans have not been formally found by the commissioner to constitute a violation pursuant to a hearing held in accordance with § 3043.

9 M.R.S.A. § 3043 provides:

Upon receiving evidence of a violation of any of the provisions of chapters 281 to 289 by a licensee, the commissioner, after notice and hearing thereon, may suspend or revoke a license. The commissioner shall give the licensee at least 10 days' written notice of the time and place of such hearing by registered mail addressed to the place of business of the licensee. The notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the commissioner and shall be effective at a date stated in the commissioner's decree but not less than 10 days after such decree is forwarded by registered mail to the licensee at his place of business. Any appeal from such order may be taken in accordance with section 7. No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful loan contract. The suspension or revocation of a license shall include the suspension or revocation of the privilege to make loans subject to chapters 281 to 289. If the commissioner should find a violation of sections 3081 or 3082, he shall so notify the lender and the borrower of his findings.



Hearings under § 3043 are not held in the abstract. Violations of §§ 3081 or 3082 may only be found on the basis of specific loan transactions. The notice and hearing requirements of the provision contemplate an opportunity for the lender to present evidence and cross examine witnesses where a violation has been alleged.

In this context the last sentence of the statute, namely: "If the Commissioner should find a violation of sections 3087 or 3082, he should so notify the lender and the borrower of his findings" can only be construed to apply to findings made at the hearing held in accordance with the statute.

Informal findings by bank examiners at their routine examinations or by the bank commissioner outside of the hearing process are not the kind of findings which the statute requires be passed on to borrowers. What the Bank Commissioner does in terms of notification to borrowers as a policy matter with respect to informal findings is another matter.

By the same token the distinction between findings made pursuant to hearing and other findings is not a vehicle for avoiding the requirement to notify borrowers of violations. Where evidence of a violation appear to exist, it is our opinion that the Bank Commissioner has a duty to hold a hearing in accordance with section 3043 to determine whether or not a violation has actually occurred, and if he finds that a violation has occurred, to notify borrowers accordingly.

MLW/mf