

MAINE STATE LEGISLATURE

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October 1, 1973

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Banks and Banking

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Interpretation of 9 M.R.S.A. § 442

9 M.R.S.A. § 442, relating to savings banks, provides, in pertinent part:

"No savings bank shall establish or operate a branch or agency until it shall have received a warrant to do so from the commissioner, who shall issue such warrant only when satisfied that public convenience and advantage will be promoted thereby No savings bank shall be permitted to establish or operate a branch or agency except within the county of its main office or a county adjoining that of its main office" (Emphasis supplied)

You have inquired whether a bank having its main office in Knox County may lawfully establish a branch in Hancock County. In your memorandum dated September 4, 1973, you recognize that Hancock County does not adjoin Knox County by land (being separated by Waldo County), but that Map No. 22 of the General Highway Atlas of Maine (prepared by the State Department of Transportation) shows Knox and Hancock Counties having a common boundary at sea.

For the reasons which follow, it is our opinion that Knox County and Hancock County are not adjoining counties within the meaning of the statute in question.

Hancock County was set off from Lincoln County on June 25, 1789 (Laws and Resolves of Mass., Chap. 24, 1789). Among the islands defined to be within the new Hancock County were Vinalhaven and Isle au Haut.

Waldo County was established July 3, 1827 (Pub. L., Chap. 354, 362) by among other things, setting off all of Hancock County lying west of Penobscot Bay and River. And, on March 15, 1838, Vinalhaven was annexed from Hancock to Waldo County (P.L. Chap. 451).

Knox County was established April 1, 1860 (P.L. Chap. 146) taking from Waldo County the towns of Appleton, Camden, Hope, North Haven and Vinalhaven. On March 12, 1913 (P.L. Chap. 83) Isle au Haut was set off from Hancock County and annexed to the County of Knox.

The legislation establishing these counties does not provide any definitive sea boundaries between Knox and Hancock Counties. It is clear, however, that Isle au Haut and Vernalhaven are now part of Knox County (each having originally been part of Hancock County) and that islands located immediately to the north are part of Hancock County.

Accordingly, the question becomes whether counties which are not adjoining on land, but which have islands that are opposite one another at sea, are "adjoining" counties within the meaning of § M.R.S.A. § 442.

In First Federal Savings and Loan Association v. State Board of Trust Companies, 254 A.2d 835 (N.H. 1969) the New Hampshire Supreme Court addressed itself to a similar question. The Court held that where the city of Manchester had a "tongue" which extended southward for about two miles along the Merrimack River and where for approximately one-third of a mile the river bank of the "tongue" was opposite the river bank of the town of Merrimack, Merrimack was a "contiguous town" within the branch banking statute. This ruling was made notwithstanding the fact that there was no bridge or other means of access from one side of the river to the other.

However, our statute uses the term "adjoining," not the word "contiguous" and although there is some overlap in the definition of the two terms, these words have somewhat different meanings. Black's Law Dictionary defines "adjoining" as follows:

"The word in its etymological sense, means touching or contiguous, as distinguished from lying near to or adjacent. Brown v. Texas & N.D.R.Co., Tex. Civ. App., 295 S.W. 670, 673; Plainfield-Union Water Co. v. Inhabitants of City of Plainfield, 84 N.J. Law., 634, 87 A. 448, 450. To be in contact with; to abut upon. State ex rel. Boynton v. Benton, 141 Kan. 103, 40 P.2d 326, 328. . . . "

In contrast, "contiguous" is defined in Black's Law Dictionary as follows:

"In close proximity; near, though not in contact; neighboring; adjoining; near in succession; in actual close contact; touching; bounded or traversed by. . . . "

The principle distinction between the two terms appears to be that "adjoining" connotes actual touching while "contiguous" does not.

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In common parlance, islands do not "adjoin" one another, but rather lie in varying degrees of proximity to one another. Indeed, by definition, an "island" is "a tract of land surrounded by water" (Webster Third New International Dictionary); and, therefore, islands do not "touch" anything but the waters which surround them.

Had the legislature desired to permit branch banking in neighboring, contiguous or adjacent counties, it could have, and presumably would have, used those more general terms, rather than the term "adjoining."

Accordingly, we conclude that where counties do not adjoin one another on land, they are not rendered adjoining within the meaning of 9 M.R.S.A. § 442 simply because the islands which have been annexed to one, neighbor or are in proximity to islands which have been annexed to the other.

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