

MAINE STATE LEGISLATURE

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October 15, 1973

Robert A. Brown, Acting Commissioner

Banks and Banking

Martin L. Wilk, Assistant

Attorney General

Conversion of Industrial Bank to National Bank

This will respond to your memorandum dated September 12, 1973, inquiring whether there is any prohibition on a State chartered Industrial Bank being converted into a National Bank, provided all requirements of the Comptroller of Currency are met. In our opinion there is no prohibition.

12 U.S.C. § 35, relating to conversion from a State bank to a National bank, provides, in part:

"Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than 51 per centum of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association; with any name approved by the Comptroller of the Currency: Provided, however, that said conversion shall not be in contravention of the State law "

In Attorney General ex rel. Amoskeag Nat. Bank v. Manchester Morris Plan Bank, 106 N.H. 428, 213 A.2d 521 (1965) the New Hampshire Supreme Court held that an industrial bank was a "state bank" within the meaning of 12 U.S.C. § 35. There is nothing in State law which prohibits a conversion by an industrial loan company or industrial bank* to a national bank.

* The term "industrial loan company" means any corporation organized under and subject to chapters 201 to 205 of Title 9 (9 M.R.S.A. §§ 2301 - 2382). Prior to 1967 such companies were entitled to use the designation "industrial bank." By virtue of 9 M.R.S.A. § 2382, only those entities which were properly authorized and doing business on or before June 1, 1967 as industrial banks, may continue to use such designation.

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We note that 9 M.R.S.A. § 1221 relating to Trust Companies provides that "Nothing in the law of this State shall restrict the right of a trust company to . . . convert into a resulting national bank," and that no such provision exists with respect to industrial loan companies. However, we do not view the absence of such a provision to evidence legislative intent to preclude such conversions by industrial loan companies. In view of the fact that state authority is not necessary to enable a state bank to change its organization to a national bank, State v. National Bank, 33 Md. 75 (1870), something more than silence would be required if the legislature intended to prohibit such conversions.

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NOT A FORMAL OPINION