

# MAINE STATE LEGISLATURE

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February 5, 1974

Alden H. Mann, Director, Securities  
Div.

Banks and Banking

Martin L. Wilk, Assistant

Attorney General

Exemption Pursuant to 32 M.R.S.A. 873.6

This will respond to your memo dated January 8, 1974 regarding the matter referred to above. As I mentioned to you over the telephone, the relationship between 32 M.R.S.A. § 873, subsection 6, and § 756, is not entirely clear.

The two provisions taken together appear to contemplate that securities, or classes of securities or certain transactions, may be exempted from the registration requirements of section 871 in accordance with regulations promulgated by the Bank Commissioner after notice and opportunity for hearing by persons interested in such regulations. While the motivation behind a proposed rule or regulation may be to create an exemption for a specific pending transaction or class of securities (that is, a particular set of facts may call attention to the need for a particular kind of exemption), in our opinion the provisions in question were not designed to exempt securities or transactions on an ad hoc basis. Any regulation would have to set forth guidelines which would in theory, if not in fact, be applicable to each transaction or security which may fall within certain enumerated guidelines. The distinction might best be explained by way of example. Assume that company "A" desired to change its operational structure by forming a limited partnership and selling shares in the partnership only to those persons presently affiliated with the company. Assume further, that all persons in the company had been employed for several years, were fully acquainted with the company and its capabilities. Assume further, that the total amount of capital participation did not exceed \$2,000 or \$3,000 per partner, and the offering would be made to not more than 10 persons.

Under the hypothetical, it would not be proper to simply promulgate a regulation exempting company "A" from compliance with the Blue Sky Laws. Rather, in our view, it would be necessary for the Bank Commissioner to promulgate a regulation which would exempt offerings to less than 10 people not exceeding \$30,000 dollars, solely under circumstances where the offerees were knowledgeable about the investment.

Accordingly, if I understand your question, the superintendent may not promulgate an "exemption by rule" in the sense that he cannot exempt a particular company (and that company only) under particular

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circumstances from compliance with the Blue Sky Laws. Rather, the superintendent would have to promulgate a regulation which would apply to company "A", company "B", or any other company, falling within the terms of the regulation.

In view of the foregoing opinion I assume that it is not necessary to respond to the last paragraph of your letter at this time. If you do desire further advise with respect to the matter, please let us know.

Martin L. Wilk  
Assistant Attorney General

MLW/bls

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