

MAINE STATE LEGISLATURE

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Veterans Small Business Loan Bd.

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Chapter 600

SYLLABUS:

The Maine Veterans Small Business Loan Authority Board is not authorized to insure unsecured loans. Where a conflict exists between the Constitution and a statute, the inconsistent statutory provision must yield to the Constitution. The Board is not permitted to insure loans secured by a second mortgage; it may only insure loan payments which are secured by a "mortgage" as that term is defined in the statute, i.e., "a first lien on an eligible project."

The insurance premium authorized by Section 49 of the Act should be computed as a percentage of the entire principal obligation outstanding at the beginning of each year and not as a percentage of merely that portion of the principal obligation insured by the Board. The Board is limited to insuring up to 80% of a loan having a maximum principal obligation not exceeding \$15,000. In other words, the extent of the Board's insurance obligation with respect to any one project may at no time exceed \$12,000.

FACTS:

In 1973, the 106th Legislature, meeting in regular session, enacted P.L. 1973, Chapter 600, entitled "AN ACT Creating the Maine Veterans Small Business Loan Authority Board and Establishing a Mortgage Insurance Fund," 37-A M.R.S.A. §§ 41 through 50-F. Simply stated, the Act authorizes the Board to insure qualified loan payments required by the first mortgage on eligible projects. The program is limited to qualified veterans as defined in Section 45(10) of the Act. The legislation was authorized by constitutional amendment approved by the voters in November, 1972, as follows:

" 14-E Business loans to veterans

"Section 14-E. For the purposes of recognizing the services and sacrifices of Maine's men and women who have served their state and country through honorable service in the Armed Forces of the United States in time of war or national emergency, enlarging the opportunities for

employment of Maine's veterans; insuring the preservation and betterment of the economy of the State of Maine; and stimulating the flow of private investment funds to Maine's veterans, the Legislature by proper enactment may insure the payment of up to eighty percent of any mortgage loan to resident Maine veterans of the Armed Forces of the United States, when such loans are made in connection with such legitimate purposes and under such terms and conditions as the Legislature may determine, not exceeding in the aggregate two million dollars in amount at any one time and may also appropriate moneys and authorize the issuance of bonds on behalf of the State at such times and in such amounts as it may determine to make payments insured as aforesaid." (Emphasis added.)

QUESTIONS:

1. May the Veterans Small Business Loan Authority Board legally insure unsecured loans? No.
2. May the insurance premiums authorized by Section 49 of the Act be computed as a percentage of the entire principal obligation outstanding at the beginning of each year or only with respect to that portion of the principal obligation insured by the Authority or 80% of the principal obligation? As a percentage of the entire principal obligation outstanding at the beginning of each year.
3. May the Board legally insure up to \$15,000 of a principal obligation which exceeds that amount, or whether it is limited to insuring 80% of loans which involve a principal obligation up to but not exceeding \$15,000? The Board may not insure more than 80% or \$12,000 of a loan having a maximum principal obligation of \$15,000.

REASONS:

1. Section 14-E of the Constitution states in pertinent part that "the Legislature by proper enactment may insure the payment of up to 80% of any mortgage loan to resident Maine veterans of the Armed Forces of the United States, when such loans are made in connection with such legitimate purposes and under such terms and conditions as the Legislature may determine." (Emphasis added.)

This language limits the kind of loans which may be insured to mortgage loans. The reference to "terms and conditions" refers to such terms and conditions which the Legislature may determine with respect to mortgage loans.

When the Legislature enacted the Maine Veterans Small Business Loan Act, it purported in Section 50-B to authorize the Board to insure loans with "less than full collateral or even no collateral . . .". This provision obviously is in direct conflict with the underlying constitutional provision referred to above.

The law is well settled that where a conflict exists between the Constitution and a statute purportedly enacted pursuant thereto, the inconsistent statute must yield to the Constitution, and to the extent there is any inconsistency, the statute is without force or effect.

Further support for this construction appears in the Act itself. Section 43 provides that "the Maine Veterans Small Business Loan Authority is authorized to insure the payment of up to 80% of mortgage loans secured by eligible projects. . . ." Section 45(8) defines the term "mortgage" as "a first lien on an eligible project such as commonly given to secure advances on an unpaid purchase price of real estate or personal property under the laws of the State of Maine, together with the credit instruments, if any, secured thereby."

In addition, Section 48 provides that the Board is authorized to insure loan payments "required by the first mortgage on any eligible project. . ." provided the aggregate principal obligations of all mortgages so insured, outstanding at any one time, shall not exceed two million dollars.

The repeated reference to mortgage loans and security interests throughout the Act demonstrates the overriding intention of the Legislature to limit the program to insuring fully collateralized loans.

2. Turning to the question concerning the manner in which insurance premiums shall be computed, we note that Section 49 of the Act provides as follows:

" 49. Loan insurance premiums

"The loan authority board is authorized to fix loan insurance premiums for the insurance of loan payments under this subchapter, such premiums to be computed as a percentage of the

principal obligation of the loan outstanding at the beginning of each year. Such insurance premiums shall not be less than $\frac{1}{2}$ of 1% per year nor more than 2% per year of said outstanding principal obligation. Such premiums shall be payable by the lenders in such manner as shall be prescribed by the loan authority board."

The reference to "the principal obligation of the loan" refers to the amount of principal which the borrower owes to the lender. While the amount of insurance is expressed in terms of up to 80% of mortgage loans (Section 43), the computation of insurance premiums is clearly expressed as a percentage of the principal obligation of the entire loan outstanding at the beginning of each year. Had the Legislature intended premiums to be computed on the basis of a formula which recognized that only up to 80% was being insured, it presumably would have done so expressly.

We note, parenthetically, that the Board has considerable latitude in fixing premiums from a minimum of $\frac{1}{2}$ of 1% per year to 2% per year. If, therefore, the Board desires to take the 80% factor into consideration in arriving at the percentage to be charged, it has considerable latitude within which to do so.

3. With respect to the maximum limits of insurance, the Board is authorized to issue, it is necessary to refer to Section 48(5) which provides in pertinent part "to be eligible for insurance under this subchapter, a loan shall. . . involve a principal obligation not to exceed \$15,000."

Quite clearly, a necessary precondition to eligibility is that the loan to be insured not exceed \$15,000. The amount of insurance, however, is, by virtue of Section 43 of the Act and by virtue of Article 14-E of the Constitution, limited to 80% of the eligible loan or a maximum of \$12,000.

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