

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date May 9, 1974

To Robert G. O'Malley, Manager

Dept. Veterans Small Business Loan Authority

From Charles R. Larouche, Assistant

Dept. Attorney General

Subject Legislator as Board member and Loan to Corporation by Veterans Loan Board

This replies to your May 2, 1974 request concerning subject. Your first question is whether or not a member of the Maine Veterans Small Business Loan Authority Board who is subsequently elected and sworn in as a Maine legislator can thereafter continue as a member of said Board. The answer to that question is negative.

Article III, sections 1 and 2 of the Constitution of Maine prohibits such a dual role. Article III, Sec. 1 divides the powers of government into three distinct departments: legislative, executive and judicial. Art. III, Section 2 provides: "no person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted."

The Constitution of Maine makes no exception for this case. A legislator is by definition a member of the legislative department, and a member of the Maine Veterans Small Business Loan Authority Board is a member of the executive department. A person cannot simultaneously hold these two positions and when he takes the oath as a legislator, he will automatically divest himself of authority to sit as a member of the said Board.

Your next question is whether or not the Maine Veterans Small Business Loan Authority can make a loan to a corporation if 51% of its common stock is owned by the veteran and the veteran is willing to endorse the note personally. The answer is negative.

Article IX, Section 14-E, Const. of Maine, provides that "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."

The Maine Veterans Small Business Loan Authority Act provides the following definition of a "borrower";

"'Borrower' shall mean the original borrower under a note and his successors and assigns, and shall be limited to veterans of the State of Maine." 37-A M.R.S.A. § 45, subsection 1."

The Act defines "veteran" as follows:

"Veteran" shall be construed to mean any person who served in the Armed Forces of the United States on active duty during World War I, World War II, the Korean War or Viet Nam War, not dishonorable discharged. A veteran of the Viet Nam War shall have served on active duty for a period of more than 180 days, any part of which occurred after August 4, 1964, except if he was discharged for a service connected disability after such date." 37-A M.R.S.A. § 45, sub-§10."

It is clear from the foregoing that the mortgage loan must be made to the veteran and not to a corporation in which he has an interest, and that the veteran must be the original borrower.

CRL/mf


Assistant Attorney General

AN INFORMAL OPINION