

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date December 4, 1975

To Maynard C. Dolloff, Commissioner

Dept. Agriculture

From David Roseman, Assistant

Dept. Attorney General

Subject Bond requirement under the "Potato Licensing Law"

From Mr. Ralph Kierstead's memo of November 7, 1975, to this Office and my conversations with him, it is my understanding that Potato Service, Inc., of Presque Isle, and American Kitchen Foods, Inc. of Caribou, are potato processors (the term "processor" is defined in 7 M.R.S.A. § 1012 subsection 14), and that in September of this year these two corporations filed applications with the Department of Agriculture for licensure under the so-called "Potato Licensing Law," 7 M.R.S.A. § 1011 et seq. Subsequently, Potato Service, Inc. and American Kitchen Foods, Inc. filed petitions in the District Court of the United States for the District of Maine, Northern Division for an arrangement under Chapter XI of the Bankruptcy Act. The above firms are, pursuant to the Order of the Bankruptcy Judge dated October 17, 1975, (a copy of which is attached hereto), debtors in possession.

7 M.R.S.A. § 1015 requires in applicable part that:

"In order to insure the licensee's financial responsibility and to protect potato producers, the commissioner [of Agriculture] shall require the licensee to file a bond in a form and amount satisfactory to the commissioner, but in no event not less than \$5,000, nor more than \$50,000, payable to the commissioner in his official capacity and conditioned on the full and prompt payment for all potatoes received or purchased from producers or other licensees during the effective period of the license."

The Commissioner of Agriculture has required that Potato Service, Inc. and American Kitchen Foods, Inc. each obtain a bond in the amount of \$50,000. These two firms have, however, informed the Department of Agriculture that they have been unable to obtain the necessary bond. The Department of Agriculture has asked whether the filing of the petition for an arrangement under Chapter XI and the issuance of a certain "stay" order by the Bankruptcy Judge (such "stay" order was issued on October 17, 1975, as part of the "Order Authorizing Debtors to Remain In Possession and to Operate Business," a copy of which is attached hereto) exempt Potato Service, Inc. and American Kitchen Foods, Inc. from complying with the bonding requirement of 7 M.R.S.A. § 1015. It is the opinion of this Office that the answer to that question is negative.

In the attached Order, the Bankruptcy Judge, among other things, enjoined all persons, firms and corporations from cutting off or disconnecting utility services, and from commencing or continuing any action or other proceeding in any court until further order of the Bankruptcy Court. There is nothing, however, in said Order which specifically exempts Potato Service, Inc. or American Kitchen Foods, Inc. from complying with 7 M.R.S.A. § 1015. On the contrary, it may be stated somewhat generally that although a petition for a Chapter XI arrangement is filed, the trustee, receiver or debtor in possession must comply with valid State laws. See 28 U.S.C. § 959(b);<sup>1/</sup> 18 U.S.C. § 1911;<sup>2/</sup> Collier on Bankruptcy Vol. 8 §§ 1.15, 1.21 and 6.35 [7].

In Gillis v. California, 293 U.S. 62 (1934) the United States Supreme Court had before it a similar situation. Under the laws of California it was unlawful for a person to act as a distributor of motor vehicle fuel if that person did not have a license and did not obtain a bond conditioned to pay taxes and observe other requirements. A receiver was appointed by the United States District Court for a certain oil and refining company undergoing reorganization. The receiver obtained his license and bond. Sometime thereafter, however, the surety refused to continue upon the bond. The receiver requested an exemption from compliance with this California law, claiming that if he were forced to comply with this licensing and bonding law he would no longer be able to operate the company. The District Court authorized the receiver to continue his operations without license or bond. The Circuit Court of Appeals reversed the lower court, and the United States Supreme Court affirmed the judgment of the Court of Appeals. The Supreme Court said in applicable part:

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- <sup>1/</sup> "A trustee, receiver or manager appointed in any cause pending in any Court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof."
- <sup>2/</sup> Whoever, being a receiver, trustee, or manager in possession of any property in any cause pending in any court of the United States, wilfully fails to manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof, shall be fined not more than \$3,000 or imprisoned not more than one year, or both.

Maynard C. Dolloff, Commissioner  
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". . . The ultimate inquiry is whether Congress can withhold from District Courts the power to authorize receivers in conservation proceedings to transact local business, contrary to state statutes obligatory upon all others.

"That Congress has such power we think is clear, and the language of § 65 [§ 65, Jud. Code, is presently codified, with certain changes, in 28 U.S.C. § 959(b) and 18 U.S.C. § 1911] leaves no doubt of its exercise.

". . . [T]here seems no ground whatever for saying that Congress cannot withhold or withdraw from courts of equity the right to empower receivers in conservation proceedings to disregard local statutes. . . .

"And if the receiver cannot continue to carry on the Company's business according to the plain direction of Congress, he must pursue some other course permitted by law." 293 U.S. at 66.

Accord, In Re Dolly Madison Industries, Inc., 504 F.2d 499 (Third Circuit 1974).

  
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DAVID ROSEMAN  
Assistant Attorney General

DR:mfe

cc: Ralph Kierstead, Marketing Specialist,  
Department of Agriculture