

MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date October 19, 1976To Frank M. Hogerty, Jr., Superintendent Dept. Bureau of InsuranceFrom S. Kirk Studstrup, AssistantDept. Attorney GeneralSubject Amendment of Corporate Purposes-Licensing of Organizations as Insurance Agents

I am enclosing herewith a copy of a letter from Attorney Meyer M. Marcus, addressed to the Attorney General, in which Mr. Marcus questions the necessity of requiring corporations organized under the general laws of the State of Maine to amend their corporate charters in order to obtain licensing as insurance agents. Mr. Marcus' specific reference is to automobile agencies which wish to be so licensed in order to offer insurance to their customers as an incident to the sales of automobiles. I have discussed this matter informally with First Deputy Superintendent Harold E. Trahey and Ms. Louise B. Fergusson of the Bureau and I am setting forth the following comments for your information at their request.

The licensing of organizations as insurance agents is governed in part by 24-A M.R.S.A. § 517. Subsection 2 of that section states:

"The Superintendent shall not license a firm or corporation unless the license is within purposes stated in the partnership agreement or certificate of organization."

It is my understanding that it has been the policy of the Bureau to require corporations to amend their charters, whether in the form of a certificate of organization or articles of incorporation, to specifically state a purpose of acting as an insurance agent in order to obtain their license. It is my feeling that this policy should be changed with regard to corporations organized after January 1, 1972, under the Maine Business Corporation Act which became effective on that date (Title 13-A M.R.S.A.).

Prior to enactment of the Maine Business Corporation Act, corporations organized under the general law were required to state their purposes in their "certificate of organization." 18 M.R.S.A. § 73 (now repealed). The statement of purposes was generally considered to be a limitation on the action of the corporation, in the sense that corporations could not do business outside of their stated purposes. This is the probable reason why 24-A M.R.S.A. § 517,2 (effective January 1, 1970) required a showing that the sale of insurance was included within the stated purposes of a corporate applicant.

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Enactment of the Maine Business Corporation Act (13-A M.R.S.A. § 101 et seq.) represented a change in basic philosophy concerning corporate purposes. Title 13-A M.R.S.A. § 401,1 provides, in part: ". . . A corporation may be organized under this act for the purpose of carrying on any business or businesses lawful in the place where the same are to be carried on." In addition, section 404 of the same Title states that it is not necessary to specify in the "articles of incorporation" the specific business or businesses which the corporation plans to conduct, and unless there is specific limitation in the articles of incorporation, ". . . a corporation organized under this Act shall have unlimited power to engage in and to do any lawful act concerning any or all lawful businesses for which corporations may be organized under this Act." It is clear that corporations organized under the Business Corporation Act, subsequent to January 1, 1972, would not have to specify in their "articles of incorporation" a statement of purpose to sell insurance in order to be authorized under the terms of the general corporation law to conduct such business. Therefore, it is my advice that it would not be necessary to require such corporations to amend their articles of incorporation to include specific reference to the sale of insurance, the authority to conduct such business already having been granted in Title 13-A.

On the other hand, I have found no authority which would necessarily convey to corporations organized prior to enactment of the Maine Business Corporation Act the unlimited purposes of a corporation organized under that Act. Therefore, I believe that the Bureau would have legal support for a policy which would require corporations incorporated under the prior statute to amend their certificates of organization to specifically include the purpose of selling insurance in order to obtain a license for the organization.



S. KIRK STUDSTRUP
Assistant Attorney General

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