

# MAINE STATE LEGISLATURE

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1. Criminal Records; Effect on Licenses  
2. Licenses; Persons with Criminal Records

# STATE OF MAINE

5 M.R.S.A. § 5301 et seq.  
7 M.R.S.A. § 1015

3. Maine Potato Licenses

Inter-Departmental Memorandum Date October 19, 1976

To Ralph M. Keirstead, Marketing Specialist

Dept. Agriculture

From David Roseman, Assistant

Dept. Attorney General

Subject Application for Maine Potato License by Rayco Farms

You have stated in an earlier memo to me that Rayco Farms, Inc. has applied for a license to operate in the business of buying and selling potatoes, pursuant to the so-called Potato Licensing Law, 7 M.R.S.A. § 1011 et seq. You have further stated that the President of Rayco Farms, Inc. informed the Department of Agriculture that he was convicted of a felony two years ago for federal income tax evasion involving a trucking business. You have requested an opinion from this Office regarding whether the Commissioner of Agriculture may deny a license under the Potato Licensing Law to Rayco Farms because of said felony conviction.

The Potato Licensing Law, it may be said generally, requires that certain persons buying (other than as a consumer) or selling potatoes or negotiating sales of potatoes, or processing potatoes must obtain a license prior to engaging therein. 7 M.R.S.A. § 1015 sets forth the procedure for application to the Commissioner of Agriculture for said license. That section states in part that:

"No license shall be granted to any applicant if such person or officer, director, partner, or member thereof, has been convicted in any state or federal court of any felony within 5 years of the date of the application."

The Potato Licensing Law was enacted in 1971 by Chapter 366 of the Public Laws.

In 1975, however, the Legislature, by P.L. 1975, Chapter 50, enacted "An Act Creating Uniform Standards for Disqualification of Applicants with Prior Criminal Convictions for a License or Permit to Practice a Trade or Occupation Regulated by the State." 5 M.R.S.A. §§ 5301 - 5304. 5 M.R.S.A. § 5301 provides in applicable part that:

"Subject to . . . [this Act], in determining eligibility for the granting of any occupational license or permit issued by the State, the appropriate licensing agency may take into consideration conviction of certain crimes . . ., but such convictions shall not operate as an automatic bar to being licensed or permitted to practice any trade or occupation." (emphasis added)

..R.S.A. § 5302 states in applicable part that:

- "1. . . . Licensing agencies may refuse to grant . . . any occupational license or permit . . .
- A. When the applicant has been convicted of a felony, or a misdemeanor involving moral turpitude or for which a jail sentence may be imposed, and such criminal conviction directly relates to the trade or occupation for which the license or permit is sought; but only
- B. If the licensing agency determines, after complete investigation, that the applicant so convicted has not been sufficiently rehabilitated to warrant the public trust." (emphasis added)

5 M.R.S.A. § 5302(2) provides that there is a rebuttable presumption of sufficient rehabilitation if the applicant has successfully completed probation or parole, or has been finally discharged from any imprisonment without a subsequent conviction. 5 M.R.S.A. § 5303 provides for a 3-year time limit on consideration of prior criminal convictions, if there are no additional convictions.

A "trade" has been defined as "any sort of dealings by way of sale or exchange; commerce; traffic." See Gower v. Inhabitants of Jonesboro, 83 Me. 142, 145 (1891); Steinbeck v. Gerosa, 151 N.E. 2d 170, 173 (New York, 1958). ". . . [T]he business one practices or the work in which one engages regularly: one's calling: gainful employment: means of livelihood,: occupation. . . ." Webster's Third New International Dictionary. An "occupation" has been defined as ". . . the work in which one is regularly or usually engaged." See Bowen v. Merchants Mut. Cas. Co., 107 A.2d 379, 385 (New Hampshire, 1954). It thus appears to this Office that the Potato Licensing Law does deal with the licensing of a trade or occupation. (For example, it appears that a potato "broker" or a potato "dealer," as those terms are defined in 7 M.R.S.A. § 1012(3)(5), is engaging in a trade or occupation.) And by its terms, 5 M.R.S.A. §§ 5301 - 5304 is applicable to "any trade or occupation" requiring licensure by the State. (emphasis added) Accordingly, we believe that the section of the Potato Licensing Law dealing with the application for a license and the consideration of felony convictions in connection therewith, 7 M.R.S.A. § 1015, is repealed by implication by 5 M.R.S.A. §§ 5301 - 5304 to the extent that that portion of 7 M.R.S.A. § 1015 is inconsistent with 5 M.R.S.A. §§ 5301 - 5304. State v. Taplin, 247 A.2d 919 (Me. 1968); State v. London, 162 A.2d 150 (Me. 1960).

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1/ In addition, the legislative history of the above referenced statute indicates that the statute applies to "any trade or occupation regulated by the State of Maine." See Statement of Fact to L.D. 402 and Recommendation #71 of the report of the Governor's Task Force on Corrections, to which reference is made in that Statement of Fact. L.D. 402, as amended, was enacted as P.L. 1975, Chapter 150.

You have stated that the conviction of Mr. Coulombe, President of the applicant corporation, was for "Federal Income Tax evasion involving a trucking business." If this conviction does not directly relate to the trade or occupation for which licensure is sought by the applicant, we believe that the Commissioner of Agriculture should grant the applicant a license under the Potato Licensing Laws. See 5 M.R.S.A. § 5302(1). If this conviction does relate directly to the trade or occupation for which licensure is sought, the Commissioner of Agriculture should determine after complete investigation whether or not the President of the applicant corporation has been sufficiently rehabilitated to warrant the public trust. If the Commissioner's decision is against licensure, he must explicitly state in writing the reasons therefor. See 5 M.R.S.A. § 5302(1) and (2).

I am enclosing a copy of 5 M.R.S.A. §§ 5301 - 5304 for your reference. If you have any further questions with regard to that statute or with regard to the application in question, please do not hesitate to contact me.



DAVID ROSEMAN  
Assistant Attorney General

DR:jg  
cc: Joseph Williams,  
Commissioner of Agriculture