

MAINE STATE LEGISLATURE

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March 7, 1977

Honorable Samuel W. Collins, Jr.
Senate Chambers
State House
Augusta, Maine

Dear Senator Collins:

As you requested, I have reviewed L.D. 626, An Act to Establish the Maine Nonprofit Corporation Act, to determine its relationship to draft legislation proposed by this office entitled: "An Act Concerning Review of Corporation Certificates and Other Documents." The purpose of our draft legislation was to end the current duplicate review process whereby both the Secretary of State and the Attorney General review corporate documents. Further, it was designed to eliminate the current time demands imposed on our office by such review which can be accomplished perfectly competently by the Secretary of State's Office.

As specified in our legislation, our office of course remains available to the Secretary of State when particular problems develop. However, we estimate that while many corporate charters must be changed after review for technical reasons, most of this review could be accomplished by the Secretary of State's Office through exchanges of correspondence or contacts with the person filing the corporate charter. We expect in only about one out of a hundred cases would a question be so serious that the Attorney General's Office should become involved.

I found no overlap between the draft legislation we have submitted and L.D. 626. However, there would appear to be some amendments to L.D. 626 which would be appropriate to limit review of corporations to the Secretary of State.

First, we believe that Section 2 of L.D. 626 amending 5 M.R.S.A. § 191 should be stricken. This section specifies the fees our office would charge for advance review of corporate documents.

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Second, Section 108 of the proposed Title 13-B should be stricken. This section imposes the same advance approval obligations on the Department of the Attorney General as we are trying to eliminate regarding other corporate certificates.

Additionally, we would note that it would be appropriate to amend our draft legislation by adding a new section which strikes our current authority in 5 M.R.S.A. § 191 to collect fees pursuant to Title 13-A. This amendment should read as follows:

"5 M.R.S.A. § 191, 2nd and 3rd ¶¶
from the end are repealed."

The authority of the Secretary of State provided in L.D. 626 particularly §§ 106 and 404 of Title 13-B basically imposes on the Secretary of State the same obligations as Section 108 imposes on the Attorney General. This would appear to be unnecessary duplication and requires commitment of considerable attorney time in reviewing charters.

I hope this information is helpful to you.

Sincerely,

DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec

cc: Honorable Richard Spencer