Banks: Directors Retirement Age
9-B MRSA § 325
9-B MRSA 326

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To: John A. Durham, Superintendent of Banking

From: Peter B. Bickerman, Assistant Attorney General

You have requested a legal opinion concerning questions contained in a letter sent to the Bureau of Banking by the Savings Banks Association of Maine, dated July 27, 1977. The Savings Banks Association has sought advice on the impact of L.D. 1049, now Chapter 379 of the Laws of 1977, which enacts a repeal of Title 9-B M.R.S.A. § 326(1)(F).

Title 9-B M.R.S.A. § 326(1)(F), which requires that all directors of mutual financial institutions retire from their directorships upon reaching the age of 72, is to become effective two years after the effective date of § 326 at large. That section, as part of the Banking Code (Title 9-B), became effective on October 1, 1975. Therefore, the mandatory retirement provision for directors is scheduled to take effect on October 1, 1977.

Meanwhile, in June 1977, L.D. 1049 was enacted repealing § 326(1)(F). Since this legislation was not passed under emergency status, it will not become effective until October 24, 1977, ninety days following adjournment of the Legislature. As a result, for a period of twenty-three days the retirement provisions mandated by law will be in full force and effect. Moreover, L.D. 1049 did not disturb the mandatory retirement provisions for corporators of mutual trust companies and savings banks, which are stated in § 325(1)(B).

A technical analysis of this unique situation would result in a conclusion that all directors of mutual financial institutions who are 72 years of age or older on October 1, 1977, will be legally required to resign their board memberships on that date. However, at the same time it must be recognized that the Legislature has expressed its intent that such resignations not be required, even though that expression of intent, as embodied in the repeal of § 326(1)(F), is not technically effective until October 24, 1977. A similar legislative concern that age should not act as a sole criterion for ceasing the performance of duties is found in P.L. 1977, c. 580, which prohibits the imposition of a mandatory retirement age for public employees.

In summary, there will be a period of approximately 23 days during which the mandatory resignation provision will be temporarily in effect. The question of whether such resignation should be sought in any individual case is one which must be answered initially by the remaining members of the board in question, keeping in mind the legislative intent noted above. It is suggested that the Bureau also consider this legislative intent before deciding the extent to which it might seek enforcement of the provision.

A final note concerning mandatory resignation of corporators should be added. Since § 325(1)(B) has not been repealed, all corporators of mutual trust companies and savings banks who are age 72 or older on October 1, 1977, are under a legal obligation to resign on that date. If an institution's by-laws condition eligibility for the office of trustee upon continued service as a corporator, those who are 72 years old would not be eligible for election as a trustee after October 1, 1977. Absent such by-law restrictions, eligibility for the office of trustee is unaffected.

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