

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Partnerships: Location of Offices
31 M.R.S.A. 181

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

September 23, 1977

To: Doris Hayes, Deputy Secretary of State
From: Joseph E. Brennan, Attorney General
Re: Principal Office of a Uniform Limited Partnership

On August 31, 1977, you asked for our opinion on the question of whether it is possible to form a limited partnership under Maine law and have the location of the principal place of business outside the State of Maine.

The Uniform Limited Partnership Act, Title 31 M.R.S.A. §§ 151 - 181, recognizes the establishment of a limited partnership after substantial and good faith compliance with the procedural and filing requirements found at Section 152. The certificate of limited partnership need only state the location of the principal place of business. That location need not be within the State. The certificate must also contain the names and places of residence of the individual partners. For purposes of service of process, at least one of these locations must be within the State. Even a limited partnership formed in accordance with the laws of another state which subsequently seeks to transact business within Maine must furnish the Secretary of State with a sworn statement "setting forth its business address within this State and the name and address of an individual resident of this State upon whom process against such limited partnership may be served." Title 31, M.R.S.A. § 181, sub-§ 1. A limited partnership formed under Maine law cannot be expected to provide the Secretary of State with less information than is required from those formed outside of Maine, even though the principal place of business need not be located within the State.

Additionally, Maine Rules of Civil Procedure 4(d)(10) is broad in scope and provides for substituted service upon all partners by service upon one partner or agent, provided that the claim arises out of partnership business. Rule 4(d)(10) is the only authority for service of process in the context of either the Uniform Partnership Act or the Uniform Limited Partnership Act. It states that personal service within the state shall be made:

"Upon all partners, whether within or without the state, in any action on a claim arising out of partnership business (a) by delivering a copy of the summons and of the complaint to any partner or any managing or general agent of the partnership, or by leaving such copies at an office or place of business of the partnership within the state; or (b) by delivering a copy of the summons and of the complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the partnership, provided that any further notice required by the statute shall also be given."

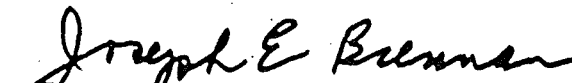
According to the rule of Macomber v. Wright, 35 Me. 156 (1852), no suit can be maintained in favor of or against a partnership in the partnership name. That rule, coupled with the adoption of the Uniform Limited Partnership Act and the Uniform Partnership Act, means that Maine partnerships are not legal entities but the aggregate of individual partners. Therefore, a plaintiff must name as defendants all of the partners whom he wishes to hold to a partnership claim. The plaintiff need not effect personal service upon each named partner-defendant. Service upon one is service upon all partners. In this regard, Maine Rules of Civil Procedure 4(d)(10) is supplemented by Section 292 of the Uniform Partnership Act, which states that:

"Notice to any partner of any matter relating to partnership affairs. . . operate(s) as notice to or knowledge of the partnership. . . ."

The uniform partnership laws reflect a policy of greater flexibility in the "place of business" concept than is available to corporations in legislation such as Title 13-A, The Maine Business Corporation Act. The conspicuous absence from partnership law of a section equivalent to Title 13-A, M.R.S.A. § 304, sub-§ 2, which requires that corporations maintain a registered

office at some fixed place within the State, is the recognition of a basic difference between corporations and partnerships. The policy allows two or more persons to pool their resources in an informal business association. If partnerships were required to satisfy the same organizational formalities as are required of corporations, the former's usefulness would be significantly reduced. Part of the attraction to the partnership form of business is the simplicity of organization and function which the law attaches to the phrase "principal place of business" in the partnership context. While the term is an important concept in corporations regulation, it plays a minor role in State control of partnerships.

The answer, therefore, is that while a partnership is not required to have the location of its principal place of business within the State of Maine, the certificate of limited or general partnership must contain a business address in this State. That business address may simply be the name and address of an individual, partner or agent, resident of this State upon whom process against such limited partnership may be served.


JOSEPH E. BRENNAN
Attorney General

JEB/ec