

MAINE STATE LEGISLATURE

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Corporation with name of existing corporation
STATE OF MAINE

Inter-Departmental Memorandum Date ~~February 21, 1978~~

To Doris Hayes, Deputy

Dept. Secretary of State

From S. Kirk Studstrup, Assistant

Dept. Attorney General

Subject Maine Development Associates

I am responding to your memorandum of January 19, 1978, concerning the availability of the corporate name "Maine Development Associates" in light of the presence in the Department's active files of another corporation by the name "Maine Development Association." The latter corporation was organized in 1925. It is our understanding that the attorney for the proposed corporation Maine Development Associates has attempted to locate the Maine Development Association in order to obtain permission to use the similar corporate name. However, the attorney has been unsuccessful in this attempt and suggests that the previous corporation may not have been operational for some time and may no longer have any officers or directors. You have asked whether there is any action which your office can take in order to allow use of the proposed corporate name.

The Maine Business Corporation Act provides that a corporate name "shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this State" 13-A M.R.S.A. § 301, sub-§ 1, ¶ B. In the present case the two corporate names in question are not the same, since one uses the word "Associates" and the other "Association." The question, then, is whether there is deceptive similarity between the two names. There is also a question as to whether the preceding corporation is now "an existing" corporation in light of the unsuccessful attempts of counsel to locate that corporation. In other words, the Secretary of State could allow filing of the new corporation under the name "Maine Development Associates" if he finds either that the corporation with the similar name no longer exists or that the names are not deceptively similar. With regard to corporate existence, the presence of the Certificate of Incorporation in the Department's files would be prima facie evidence of the existence of the corporation, but that certificate could be rebutted by evidence satisfactory to the Secretary which shows that the corporation no longer actually exists. Such evidence could include the relative age of the corporation and the existence of corporate officers. With regard to "deceptive similarity," it is our opinion that the Secretary of State may consider factors such as the location of the corporations within the State, similarities or dissimilarities in the corporate functions and other factors bearing upon the question of whether the public might be deceived by the names, in reaching his decision on whether the names are deceptively similar.

Our understanding of the facts of the present case indicates that there may be evidence present which would allow the Secretary of State to decide in favor of allowing use of the name "Maine

Development Associates" for either of the reasons mentioned above. However, this decision will have to be made by the Secretary. It should be noted that this problem will be ameliorated when the biennial report and suspension provisions of the Maine Nonprofit Corporation Act (13-B M.R.S.A.) become effective.



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe