~~DONE~~ Banking Directors Loans
9-B MRSA 465-1-A

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April 28, 1978

TO: John A. Durham, Superintendent, Bureau of Banking

FROM: Peter B. Bickerman, Assistant, Attorney General

SUBJECT: Interpretation of Title 9-B M.R.S.A. Sections 465(1)(A) and 465(1)(A)(1).

You have requested an opinion concerning the meaning of statutory provisions dealing with loans to directors of trust companies. Basic research into Section 465 and its pre-1975 predecessor (Title 9, Section 1132) has failed to reveal legislative history, case law, or administrative declarations which would provide guidance. The opinion below is based primarily upon the plain meaning of the words used in the law and canons of statutory interpretation.

Title 9-B M.R.S.A. Section 465(1)(A) states that a loan to directors or other officers of a trust company cannot be made unless approved by a majority of the "entire membership" of the board of directors or the executive committee, provided that directors "interested in said loan" cannot vote for approval. It seems clear on the face of the statute that the voting margin required is that of the entire membership of the board, not merely a majority of those directors eligible to vote. While it is possible that such a provision could foreclose approval of a loan in cases where one-half of the directors possess interested status, the use of the term "entire membership" appears to articulate a legislative intent that loans not be permitted in such circumstances.

A further question has been raised concerning the meaning of the language in Section 465(1)(A)(1), which prohibits affirmative voting by directors interested in a loan in any of the capacities listed in the preceding paragraph, or by those "associated with the borrower in any of the above ways". Upon reading and analysis, this language appears to prohibit a director from voting on loans concerning other directors with whom he is associated in business ventures unrelated to the loan.

For example, Director A and Director B are partners in Venture X. Director B wishes to obtain a loan for Venture Y. Under the terms of the law, Director A cannot vote on that loan, although he has no personal

interest in it. While this result may or may not reflect a legislative intent, it is mandated by the concept that statutory language is not to be interpreted as meaningless or redundant if a contrary interpretation is possible. The provision in question prohibits voting by two types of directors: those financially interested in a loan and those associated with the borrower. If the statute were meant to reach only those involved as borrowers or associates in the particular venture requesting a loan the "associated with" language would be meaningless, since persons directly associated would be deemed "interested" as that word is defined by statute. Therefore the law seems to be referring to business associations apart from the immediate circumstances of the loan.

Please contact me if you wish to discuss this issue further.

PBB/glm

Peter Bickerman

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