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Loans, Small Business
Small Business Loans
Veterans Loans

5 MAR 8003
5 MAR 8001
MA CONST ART 9 sec 14-A

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

August 8, 1978

To: Robert G. O'Malley, Manager, Small Business
Loan Authority

From: Sarah Redfield, Assistant Attorney General

Re: Loans of Small Business Loan Authority

This is in response to your request for an opinion as to the propriety and constitutionality of the Small Business Loan Authority's making loans pursuant to Title 5 M.R.S.A. § 8001, et seq., which loans are secured by assets other than a first mortgage on real estate. Such loans are proper and within the constitutional parameters of Article IX, Section 14-A of the Maine Constitution.

The Maine Small Business Loan Authority (hereinafter called "the Authority") was established by Chapter 568 of the Public Laws of 1977. The Authority was created to

" . . . , insure the payment of up to 80% of mortgage loans, secured by eligible projects, and to this end the faith and credit of the State is pledged, consistent with the terms and limitations of the Constitution of the State of Maine, Article IX, section 14-A," Title 5 M.R.S.A. § 8003.

While the term "eligible project" is not specifically defined, the term "eligible loan" is defined as:

" . . . any lands, buildings, real estate improvement or machinery and equipment, merchandise and stock, with auxiliary real and personal property, located within

the State used by an industrial, manufacturing, fishing or agricultural enterprise, sales and service, or both, the manufacturing, processing, assembling or preparing for market of raw materials or other products, or for the purposes of research and development for such enterprises." (emphasis supplied) Title 5 M.R.S.A. § 8001.3.

Also of interest is the definition of "mortgage" as:

". . . a first lien on an eligible project such as commonly given to secure advances on, or the unpaid purchase price of, real estate or personal property under the laws of the State of Maine together with the credit instruments, if any, secured thereby." (emphasis supplied) 5 M.R.S.A. § 8001.8.

The Authority is authorized to enter into agreements with borrowers and lenders for eligible projects and to insure loan payments "required by the first mortgage of any eligible project," Title 5 M.R.S.A. §§ 8005 and 8009. The maximum for each principal obligation insured by the Authority is \$30,000 and the aggregate maximum for all obligations is \$2,500,000.

In addition to establishing the Authority and providing for its powers, Chapter 568 of the Public Laws of 1977 established a loan insurance fund to be used by the Authority as a non-lapsing revolving fund to carry out the purposes of the Chapter. The Legislature outlined the procedure for additions to this fund by a request therefor to the Governor and a transfer by the Governor from the State Contingent Account or from the proceeds of bonds to be issued consistent with Article IX, Section 14-A of the Constitution of the State of Maine, see Title 5 M.R.S.A. § 8008. Article IX, Section 14-A provides that:

"For the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial, manufacturing, fishing and agricultural enterprises within the State, the Legislature by proper enactment may insure the payment of mortgage loans on the real estate and personal property within the State of such industrial, manufacturing, fishing and agricultural enterprises not exceeded in the aggregate \$80,000,000 in amount at any one time and may also appropriate monies and authorize the issuance of bonds on behalf of the State at such times and in such amounts as it may determine to make payments insured as aforesaid. For the purposes of this section, a documented fishing vessel shall be construed as real estate." (emphasis supplied)

The creation and authorization of the loan and guaranty powers of the Maine Small Business Loan Authority is an enactment by the Legislature consistent with this provision.

The question which you have asked requires the construction of the word "and" both in the Constitution and in certain sections of the Authority's statute as cited above. While the question is not entirely free from doubt, it seems that the intention of the Legislature, upon reading the Authority's statute as a whole and in conjunction with the applicable constitutional provision, is to allow for loans secured by personalty with or without security on real estate. See generally, e.g., Finks v. Maine State Highway Commission, 328 A.2d 792 (Me., 1974).

As a general rule of construction, Title 1 M.R.S.A. § 71.2 provides that:

"The following rules shall be observed in the construction of statutes, unless its construction is inconsistent with the plain meaning of the enactment."

"2. and; or. the words 'and' and 'or' are convertible as the sense of the statute may require."

The word "or" has been interpreted and construed as "and" in order to effectuate and not defeat the intent of the Legislature. See, e.g., Collins Granite Co. v. Devercaux, 72 Me. 422 at 424-425 (1881).

In the present case, the constitutional provision and the modifying phrase of § 8001.3 would indicate that real estate and personalty should be read conjunctively. (See also, Title 5 M.R.S.A. § 8009, as to terms which speak primarily to real estate security.) On the other hand, the use of the word "or" in the definition of mortgage would indicate that either real estate or personalty is sufficient security. The legislative history of the enactment of Chapter 568 of the Public Laws of 1977 provides little guidance. However, it is clear from the statement of fact of this bill that the overriding purpose was to "insure small business loans made to Maine residents." You have indicated that inasmuch as the maximum limit on such loans is \$30,000, the likelihood of loans being secured by first mortgages on real estate is very slight. The Legislature must be presumed to have known the significance of this limit in relation to the security provisions of the statute. With this in mind, it is our opinion that the use of the words "and" and "or" as cited above allow the Small Business Loan Authority to accept as security first mortgages on either real estate or personalty.

This interpretation is further supported by the fact that the Small Business Authority was primarily patterned after the Maine Veterans Small Business Authority, see, L.D. 1244 of 1977, Statement of Fact. The Maine Veterans Small Business Authority, established pursuant to Title 37-A M.R.S.A. § 41, et seq., provides definitions of the terms "eligible" and "mortgage" virtually identical to those cited above for the Maine Small Business Loan Authority. See, e.g., Title 37-A M.R.S.A. § 45.3 and § 45.8/^{the} current constitutional provision for the Maine Veterans Small Business Loan Act, Article IX, Section 14- E, speaks to all mortgage loans without specific mention of real estate or personal property.

Sarah Redfield

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