

MAINE STATE LEGISLATURE

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

October 24, 1978

The Honorable James K. McMahon
Box 125
Kennebunk, Maine 04043

Dear Representative McMahon:

I am writing in response to your request of October 2 relating to the so-called "joint account statute", 9-B MRSA § 427(4)(B).

First, section 427(4)(B) does apply to accounts involving three persons. This is clear from the second sentence of paragraph B, which, in pertinent part, provides:


All such deposits or accounts . . . payable to either or 2 or more or the survivor of those persons who are not husband and wife up to, but not exceeding an aggregate value of \$5,000 . . . shall . . . , upon the death of any such persons, become the sole and absolute property of the . . . survivors . . . (emphasis supplied).

The language "either or 2 or more" is confusing and apparently resulted from an error in the revision of the banking statutes (P.L. 1975 c. 500). As can be seen in the old banking statute, earlier versions of the joint account statute (9 MRSA § 515) used the language "either of two or more". The language of the earlier version appears to be required to make sense of the provision, although, technically, the language should read "any of 2 or more" since the word "either" properly applies to one of two but not to one of three or one of four, etc.

Second, an account involving a decedent, his widow and a third person would be governed by the second sentence of paragraph B. The first sentence does not apply, notwithstanding the husband and wife relationship, because the language of that sentence clearly refers only to two-person accounts involving husbands and wives. The legislative history of P.L. 1975 c. 733 reinforces this language by indicating an intent that unlimited survivorship should apply only in the case of a strictly husband-and-wife account.

The second sentence of paragraph B, on the other hand, would apply to the account you have described since it is an account "payable to either [of] 2 or more or the survivor of those persons who are not husband and wife [but, rather, are husband, wife and third person]". Accordingly, since the decedent husband was the sole contributor to the accounts, the widow and third person would each take \$2,500 by survivorship and the balance of the accounts would pass through the estate of the decedent. Considerable controversy has arisen over the effect of the language "in the name of the same persons" upon the maximum amount allowed to pass by survivorship. In having researched this area in the past, I have found nothing to indicate that the position of the Bureau of Taxation, that the stated dollar amount is the maximum to pass to all persons under a particular account arrangement (such as you have described) rather than the maximum to pass to each survivor involved in a particular account arrangement, is incorrect. However, because of the confusion arising from the language of this statute, I have drafted and enclose a bill which should resolve the problems discussed in this letter. If you desire to discuss this matter further, after having reviewed this letter and enclosure, please contact me.

Sincerely,


Clifford B. Olson
Assistant Attorney General

CBO:gr
Enc.

AN ACT to Clarify Survivorship Status of Joint Deposits and Accounts.

Be it enacted by the People of the State of Maine as follows:

9-B MRSA § 427, sub-§ 4, ¶ B, first two sentences, as last amended by PL 1975, c. 770, § 51, is further amended to read:

All such deposits or accounts, whenever opened or issued, payable to either or the survivor of two persons who are husband and wife, including interest and dividends, ~~in-the-name-of-the same-persons~~ in any financial institution within this State shall, in the absence of fraud or undue influence, upon the death of one of such persons, become the sole and absolute property of the survivor. All such deposits or accounts, whenever opened or issued, payable to either ~~or-2-or-more~~ or the survivor of these two persons who are not husband and wife or to any or the survivors of more than two persons up to, but not exceeding an aggregate value of \$5,000 \$ _____ per survivor, including interest and dividends, ~~in-the-name-of-the-same-persons~~ in all financial institutions within this State shall, in the absence of fraud or undue influence, upon the death of any of such persons, become the sole and absolute property of the survivor or survivors, even though the intention of all or any one of the parties be, in whole or in part, testamentary and though a technical joint tenancy be not in law or fact created.

STATEMENT OF FACT

The purpose of this amendment is to clarify legislative intent regarding the amount to pass by survivorship in joint deposits and accounts in three or more names. The amendment provides, by the insertion of the words "per survivor", that the stated dollar value sets the maximum amount which each

survivor takes by survivorship rather than the maximum amount which may pass by survivorship, regardless of the number of survivors. The other changes in wording are intended only to eliminate cumbersome language.