

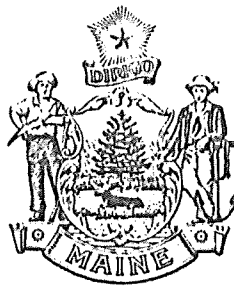
MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

August 6, 1979

Jerome F. Goldberg, Esq.
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1 Monument Square
Portland, Maine 04101

Dear Jerry:

In response to your letter of June 28, 1979, our office has reviewed the law as it pertains to your questions. At the outset we wish to emphasize that the Maine Capital Corporation appears to be a private investment corporation (10 M.R.S.A. §951), and thus it should rely upon its own counsel for continuing legal service.* Since, however, this corporation was formed by a public law and has certain unique features, we have decided that it would be appropriate to express our views on your questions even though we are precluded from issuing a formal opinion.

Your initial question was whether amending the Articles of Incorporation of the Maine Capital Corporation to include the following language:

"This corporation is organized and chartered solely for the purposes of operating under the Small Business Investment Act of 1958, as amended."

would extend the powers of the corporation beyond those authorized by the enabling legislation. It appears to us that this would be the case. As is discussed in more detail below, the Maine Capital Corporation was formed for the purpose of making equity investments in Maine business firms needing equity capital. A corporation organized for the purposes of operating as a small business investment company has the authority to borrow money and to issue debenture bonds, promissory notes or other obligations under such general conditions and subject to such limitations and regulations as the Small Business Administration may prescribe. 15 U.S.C.A. §683(a). Such companies are also empowered to make loans. 15 U.S.C.A. §685. A statement in the articles of the Maine Capital Corporation that it is "organized and chartered solely for the

* See 5 M.R.S.A. §195, limiting the authority of the Attorney General to issue opinions to state departments and agencies.

purposes of operating under the Small Business Investment Act" would thus seem to give the corporation powers which are inconsistent with the apparent legislative intent in establishing the corporation. See, 10 M.R.S.A. §950 and Remarks of Rep. Curran, 1977 Me. Leg. Record 1639 (June 14, 1977).

It should be noted that a cursory review of 15 U.S.C.A. §681, et seq., does not lead us to conclude that an application for a license to operate a small business investment company is necessarily precluded by the enabling legislation of the Maine Capital Corporation, as long as the SBA is content to have it operate within its statutory constraints and to have its articles not be amended to reflect other than its actual purposes for organization. However, the determination of whether the enabling legislation is perceived by the SBA as precluding the Maine Capital Corporation from becoming a small business investment company is one over which the State of Maine has no control. That decision rests with the SBA.

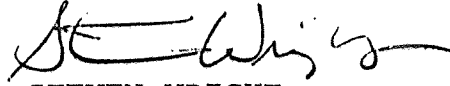
With regard to your second question, it appears that the purpose for which the Maine Capital Corporation was established is clear. As previously stated, it was created to provide equity capital for Maine businesses. See, 10 M.R.S.A. §§950, 951 and 952. Making equity investments will necessarily involve what the statute refers to as "related business dealings", that is, those dealings that attend the business of making equity investments. We find no conflict between the narrow purposes established by statute for the Maine Capital Corporation and the reference to 13-A M.R.S.A. §202. Section 202(1) provides, in pertinent part, "Subject to any limitations contained in any provisions of this Act or in any other law, each corporation shall have power: . . ." (emphasis supplied). This provision conditions the exercise of the enumerated powers upon the absence of other more specific laws limiting those powers. We can find no language in the enabling legislation for the Maine Capital Corporation that even implies that it may make debt investments or loans. On the contrary, the provisions of the enabling legislation appear to clearly limit the corporation's activities to providing equity capital and making equity investments.

The foregoing interpretation is reinforced by a review of 10 M.R.S.A. §915 et seq., the enabling legislation for the Maine Development Foundation. That Act expressly authorizes the Foundation to provide both debt and equity capital. See 10 M.R.S.A. §§917(2), §20(8), (10). The omission by the legislature of any authorization to make debt investments and loans in the enabling legislation of the Maine Capital Corporation, coupled with the express grant of such authority in the enabling legislation of the Maine Development Foundation suggests a legislative intent that the capital corporation not possess the power to make debt investments and loans.

Because your third question involves an interpretation of a pure tax issue, I have referred it to counsel for the Bureau of Taxation, Jerome Matus, Esq. You may expect a response directly from him.

I hope this information will assist you.

Best regards,



STEVEN WRIGHT
Assistant Attorney General

SW:jg

cc: Jerome Matus, Esq.