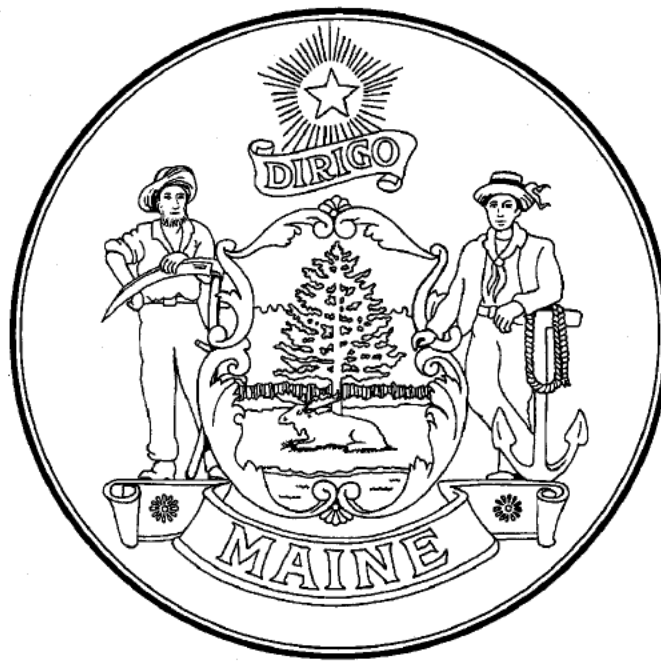


MAINE STATE LEGISLATURE

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80-23
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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 1, 1980

Michael T. Healy, Esquire
Verrill & Dana
Two Canal Plaza
P.O. Box 586
Portland, Maine 04112

Re: Confidential Financial Records Act

Dear Mr. Healy:

On behalf of Attorney General Cohen and Superintendent DeMatteis, I am responding to your inquiry concerning a possible conflict between the provisions of 9-B M.R.S.A. Chapter 16, and the investigatory powers set forth in 26 U.S.C. Chapter 78, the Internal Revenue Code.

The Confidential Financial Records Act contained in the Maine Banking Code was designed to establish limitations on the disclosure of financial records, in light of the fact that previous law had imposed few restraints on the dissemination of such records. It appears that the Confidential Financial Records Act was not intended to prohibit practices of the Internal Revenue Service which are expressly authorized by federal law. Therefore, in our view, the Maine Act should not be interpreted in a manner which might create tension with the Supremacy Clause of the United States Constitution. It is my understanding that the Bureau of Banking may support an amendment to the Confidential Financial Records Act which would clearly exempt from the scope of the Act investigatory activities authorized by the Internal Revenue Code. You may wish to speak to the Bureau on this matter.

Financial institutions should make reasonable inquiry to satisfy themselves that IRS third-party summonses are served in accordance with 26 U.S.C. § 7609. For example, unless a

court finds that special circumstances exist, notice of the IRS summons must be given to the bank customer involved at least 14 days prior to the date bank records are to be examined. 26 U.S.C. § 7609(a)(1). These procedural protections represent an integral part of the applicable federal law.

I hope that the foregoing information has been helpful. Please contact me if further questions arise.

Very truly yours,

Peter Bickerman

PETER B. BICKERMAN
Assistant Attorney General

PBB/ec

cc: H. Donald DeMatteis
Jerome S. Matus, Esq.
Merton G. Henry, Esq.