

MAINE STATE LEGISLATURE

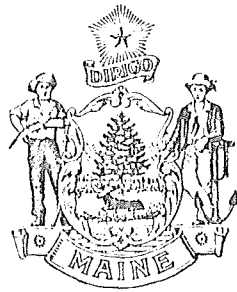
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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 23, 1980

James S. Henderson
Deputy Secretary of State
State House
Augusta, Maine 04333

Dear Mr. Henderson:

You have asked for an opinion as to whether minors can act lawfully as incorporators. We conclude that they may.

The Maine Business Corporation Act provides that, in order to form a corporation, one or more persons, acting as incorporators, shall execute and file articles of incorporation. With respect to the qualifications of incorporators, the law states that:

[t]he incorporator or incorporators may be natural persons, or domestic or foreign corporations, whether or not authorized to do business in this State, or any combination thereof.

13-A M.R.S.A. § 402(2).

A similar provision exists in the Maine Nonprofit Corporation Act. 13-B M.R.S.A. § 401.

Section 402 of the Business Corporation Act does not require that incorporators have attained a certain age, nor was there any age requirement for incorporators in predecessor statutory provisions. See 13 M.R.S.A. § 71; R.S. 1954, c. 53, § 8. By contrast, many jurisdictions have a minimum age requirement for incorporators. See, for example, McKinney's New York Bus. Corp. Law, § 401. While the Maine Act does delineate the capacity of minors in the context of shareholder voting, 13-A M.R.S.A. § 613(5), it is silent as to the capacity of minors to be incorporators.

Section 402 provides that incorporators may be "natural persons" or corporations. In general statutory construction "person" is a broad term which encompasses both minors and those who have attained majority. 1 M.R.S.A. § 72. Therefore, on its face, Section 402 permits minors to be incorporators. "A basic tenet of statutory construction is that words are to be given their ordinary meaning." State v. Flemming, 377 A.2d 448, 451 (Me. 1977). See also Moffett v. City of Portland, 400 A.2d 340, 345 (Me. 1979); In Re Belgrade Shores, Inc., 359 A.2d 59, 63 (Me. 1976).

There is some support for the proposition that, absent explicit statutory authorization, minors cannot be incorporators because they are incapable of making a binding contract. In Re Globe Mutual Benefit Association, 135 N.Y. 280, 32 N.E. 122 (1892); Fletcher, Cyclopedia of Corporations, § 83 (1974). However, the modern trend appears to allow minors to be incorporators unless a statute expressly forbids it. In light of the recognition that "the role of incorporator is . . . now little more than ritualistic," the drafters of the Model Business Corporation Act deleted a minimum age requirement from the Model Act in 1962. 2 Model Bus. Corp. Act Ann. § 53 (2d Ed. 1971). In the absence of express prohibitory language or any evidence of a legislative intent to exclude minors from eligibility as incorporators, it is our conclusion that there is no legal bar to minors acting as incorporators.^{1/}

I hope that the foregoing information is helpful. Please contact this office if further questions arise.

Very truly yours,

Peter Bickerman

PETER B. BICKERMAN
Assistant Attorney General

PBB/ec

^{1/} This opinion does not address the question of whether the ability of minors to disaffirm certain kinds of contracts may pose problems for a corporate entity after incorporation has occurred. This question would likely concern private parties rather than the Secretary of State.