

MAINE STATE LEGISLATURE

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

July 7, 1980

Mr. Wayne A. Nelson
P. O. Box 86
Augusta, ME 04330

Dear Mr. Nelson:

In response to your inquiry, I have reviewed your correspondence with Deputy Secretary of State Henderson relating to the late filing of the annual report of the corporation with which you are associated.

Title 13-A M.R.S.A. §1302(4) states that a corporation shall be excused from liability for late filing of the annual report "if it establishes, to the satisfaction of the Secretary of State, that its failure to file was the result of excusable neglect" In the context of judicial proceedings, the determination of whether neglect in a particular case is excusable is directed to the discretion of the trial judge. Sevigny v. City of Biddeford, 344 A.2d 34, 38 (Me. 1975). Likewise, in this situation the determination of whether excusable neglect exists must rest with the discretion of the Secretary of State or those to whom authority is delegated by the Secretary. Mr. Henderson's interpretation of the phrase "excusable neglect", as it is used in §1302(4), appears to be a reasonable exercise of his discretion.

I hope that the foregoing advice is helpful.

Very truly yours,

Peter Bickerman

PETER B. BICKERMAN
Assistant Attorney General

PBB/glm

cc: James S. Henderson,
Deputy Secretary of State