

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

July 21, 1986

Mary L. Schendel  
Maine State Bar Association  
124 State Street  
P.O. Box 788  
Augusta, Maine 04330-0788

Dear Ms. Schendel:

You have inquired, on behalf of the Maine Bar Foundation, whether the Foundation is entitled, in Maine law, to the "entire beneficial interest" in trust accounts ("IOLTA accounts") established by Maine lawyers pursuant to Maine Bar Rule 3.6(f)(5), when it is named as the beneficiary of such accounts. The rule authorizes the commingling of funds held in trust by Maine lawyers so long as the interest from those commingled funds would not exceed the administrative costs of establishing separate interest bearing accounts for each trust, and so long as such interest is paid to an eligible non-profit corporation. For the reasons which follow, it is the Opinion of this Department that the Foundation, under the circumstances you describe, would in Maine law be entitled to the entire beneficial interest in the proceeds of IOLTA accounts.

The question you raise arises because, under Section 303 of the federal Consumer Checking Account Equity Act of 1980, certain enumerated financial institutions, consisting largely of state chartered or federally insured banks, are prohibited from establishing private interest bearing checking accounts ("NOW accounts") unless the "entire beneficial interest" thereof is held by natural persons or by non-profit organizations "operated primarily for religious, philanthropic, charitable, educational, or other similar purposes." 12 U.S.C. § 1832. Thus, financial institutions in Maine covered by this statute must be sure that non-profit charitable organizations such as the Maine Bar Foundation are legally entitled to the

"entire beneficial interest" in the proceeds of trust accounts, such as IOLTA accounts, inuring to their benefit, before establishing NOW accounts for those organizations. Since the question of the legality of the entitlement of the Foundation to the interest from IOLTA accounts is one of state law, you have asked for our Opinion as to whether there is any restriction in Maine law to the Foundation's ability to compel payment of interest from IOLTA accounts to it.

In your letter requesting this Opinion, you set forth the circumstances under which IOLTA accounts will be established for the benefit of the Foundation.

Upon a lawyer's or law firm's designation of the Foundation as the recipient for IOLTA income, all interest earned on his or its IOLTA account will be remitted to the Foundation for its exclusive use in carrying out its three specified functions. Clients whose funds are deposited in any IOLTA account will have no claim or right to any interest earned on such funds, nor will they have any right to withdraw funds directly from an account. Only the lawyer or law firm opening such account may withdraw funds therefrom, but even such lawyer or law firm will not be able to withdraw any earned interest.

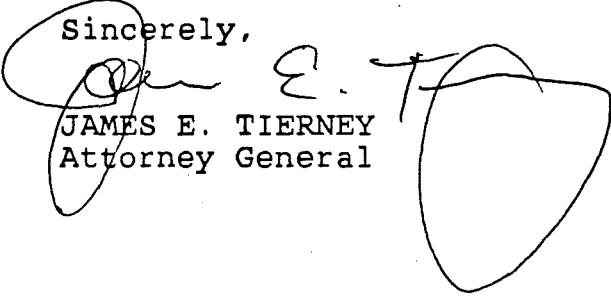
Thus, any interest that a client has in an account is limited to that which such client would have if the funds had been deposited in a non-interest bearing checking account--a right to the principal sum only. Neither clients nor the attorneys or law firms maintaining the accounts may receive any interest earned on the accounts or receive any other direct or indirect pecuniary benefit from the deposit of clients funds into such accounts. Upon an attorney's or law firm's designation of the Foundation as the recipient for IOLTA income, the only beneficiary or recipient of any interest from the interest-bearing accounts is the Foundation.

It thus appears clear that no one - not the participating lawyers, nor any of their clients, nor anyone else - would be entitled under this scheme to the interest from the IOLTA accounts except the Foundation. The question thus becomes whether, in Maine law, a person designated as the sole beneficiary of the income accruing to a trust has a legally

protected right to that interest. While it does not appear that this precise point has been the subject of any ruling of the Supreme Judicial Court of Maine, that Court has indicated that a person who has an unrestricted interest in the "benefit" of a trust has an ownership interest in that trust. Paine v. Forsaith, 86 Me. 357 (1894). There is no reason to conclude that if the established beneficial interest were in something (such as the income from the trust) which was less than the entire trust, the Court would come to any different conclusion. Thus, this Department concludes that an exclusive designee of the interest of a trust has a legally protected right to that interest for as long as he remains so designated.

I hope this answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY  
Attorney General

JET/ec

cc: Howard H. Dana, Esq.