

April 8, 1976

Re: Prejudgment Attachments and Mechanic's Liens - §5.104.

Dear

You have inquired whether §5.104 prohibits prejudgment attachment in a situation subject to the Credit Code where the creditor seeks the attachment to secure in-rem jurisdiction over the debtor. The language in that section does not include any exceptions to the rule set forth therein.

Section 5.104 of The Maine Code is non-Uniform in that it prohibits prejudgment attachment, while The Uniform Code refers only to prejudgment garnishment. The Uniform Code drafters, in their comments to §5.104, refer to and adopt the recommendation of the National Commission on Consumer Finance that prejudgment garnishment, including garnishment of non-resident consumers, should be abolished.

Rule 4A of the Rules of Civil Procedure limits the application of that rule to attachments made "in the manner and to the extent provided by law". It is the opinion of this Bureau that §5.104 prohibits pre-judgment attachment in all cases subject to the Credit Code regardless of the purpose which the creditor seeks to achieve through the attachment.

You have also inquired whether a mechanic's lien constituted a "like proceedings" within the terms of §5.104. It is our opinion that a mechanic's lien does not fall within the intent of §5.104.

Neither the drafters of the Uniform Consumer Credit Code nor the National Commission on Consumer Finance appear to have considered mechanic's liens as an abusive device customarily employed by creditors. Further, there is no evidence available to indicate that the Maine Legislature or the drafters of Maine's version of the Code intended to limit the application of this statutory tool which has been in effect since the early 1800's. Had the Legislature, in fact, intended to limit this device, it was incumbent upon them to have been more specific.

Respectfully,

John E. Quinn
Superintendent

JEQ/jh