COLLECTION AGENCY
ADVISORY RULING #1
MARCH 11, 1982

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Dear

You have asked for an Advisory Ruling from this Bureau concerning the interpretation of the type of entity which must have a license pursuant to the Collection Agency Law, 32 M.R.S.A., § 571 et seq. You have described the following fact pattern: Your client is a municipality which processes applications for a federal program that provides low interest loans for rehabilitation of private residences. The loan and mortgage is executed in favor of the United States of America and the Department of Housing and Urban Development in turn assigns the administration of the loan to a supervised lender, but not your client. You are now being asked by the Department of Housing and Urban Development to participate in a more active way in seeking collection of loans made pursuant to this program when delinquencies occur. You are contacting debtors to remind them to bring payments up to date, assisting and working out repayment schedules in hardship cases, advising people that certain legal penalties will occur, such as foreclosure, if late payments are not brought current. You asked whether or not your client must obtain a license to engage in this type of activity pursuant to the Collection Agency Law.

32 M.R.S.A., § 571, subsection 1, defines "collection agency" to include "any person conducting business in the state, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due another." By using the terms "principal purpose" and "regularly collects," the statute allows this Bureau to make a distinction between an organization or an individual which engages in the debt collection activity as an incident to other regular business not normally related to that of a debt collection agency. In the case of your client, a municipality, clearly the kind and level of activity you have described does not constitute a principal or regular activity. Therefore, while the Bureau has never adopted a numerical standard to determine the degree of activity necessary to trigger the licensing requirement, we will analyze cases such as yours on an individual basis.

In addition to the regularly engaged test of § 571, subsection 1, the exclusion of § 572 is relevant and confirms our decision that licensing is not required in this instance. § 572 excludes from the licensing requirement those persons whose collection activities are "confined to and are directly related to the operation of a business other than that of a collection agency..." This exclusion is similar to that of the Federal Fair Debt Collection Practices Act, 15 U.S.C., § 1692, et seq., which excludes persons who are collecting their own debts. Although your client is not, in this instance, collecting its own debts, it does have a relationship to the debt in question in that it processes applications for the loans and oversees technical compliance with the resulting rehabilitation project. In addition, it should be noted that your client will not receive any payment for the services it is rendering in the debt collection process.

In conclusion, the Bureau has determined that your client is not in the business of collecting debts for others and is not subject to the licensing requirements of the Collection Agency Law. This Advisory Ruling is limited to the facts as you presented in your letter of February 10, 1982, and a subsequent telephone conversation on February 17, 1982.

Sincerely,

/s/ Barbara R. Alexander

Barbara R. Alexander
Superintendent

BA:as
(Dictated but not read)