MAINE
LEGISLATIVE RESEARCH
COMMITTEE

REPORT
TO
NINETY-NINTH LEGISLATURE

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M A I N E

L E G I S L A T I V E R E S E A R C H

C O M M I T T E E

1957-1958

STATE OF MAINE

SUMMARY REPORT

to

NINETY-NINTH LEGISLATURE

LEGISLATIVE RESEARCH COMMITTEE

From the Senate:

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Clarence W. Parker, Sebec
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J. Hollis Wyman, Milbridge

From the House:

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Speaker of the House
Robert N. Haskell, Bangor,
President of the Senate

Director:

Samuel H. Slosberg, Gardiner

Assistant Director:

Samuel S. Silsby, Jr., Augusta

January, 1959

To Members of the 99th Legislature:

The Legislative Research Committee is pleased to submit herewith the first report of its activities of the last two years. This report covers eight of the many studies which were referred to the Committee by the 98th Legislature. The subjects contained herein are: Daylight Saving Time; District Court System; Federal Flood Insurance; Freedom of Access to Public Records and Proceedings; Plumbers and Electricians Licensing Law; Small Loan Statutes; Unfair Trade Practices and Use Tax Collection.

In all, nineteen items were considered by the Committee. Two of these, Recruitment and Retention of Employees and Highway Planning, have already been reported to special sessions of the 98th Legislature. The other reports will be made available to all Legislators as soon as possible.

It is the hope of the Committee that the information contained herein will be useful to the members of the 99th Legislature.

Respectfully submitted,

LEGISLATIVE RESEARCH COMMITTEE

By
Rodney E. Ross, Jr., Chairman

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DAYLIGHT SAVING TIME

ORDERED, the House concurring, that the Legislative Research Committee be, and hereby is, directed to study the question of whether or not daylight saving time in the state should be extended to cover the entire year.

The Committee shall report on its findings and such recommendations as it may wish to make at the next regular session.

The Legislative Research Committee, under legislative order originating at the First Special Session of the 98th Legislature, has studied the problem of Daylight Saving Time. The Committee on February 11, 1958 in Executive Session, following a scheduled public hearing at which neither proponents nor opponents appeared, decided in order to minimize confusion that any action taken in this State should coincide with that taken by the New England States. On the theory that the problem should be discussed on a New England basis, it was voted to refer the study through the Commission on Interstate Cooperation to the New England Commission on Interstate Cooperation for suggested approaches and solutions. A meeting with the New England Commissions was arranged by the Council of State Governments and held on July 23, 1958 in Boston; attending on the Committee's behalf was Samuel H. Slosberg, Director of Legislative Research. Present were members of the Interstate Cooperation Commissions and Chambers of Commerce of Maine, Massachusetts, Vermont and Rhode Island.

The following two areas were discussed: (a) extending

Daylight Saving Time to the last Sunday in November, (b) extending Daylight Saving Time for the entire year. The consensus of those attending the conference was that there was very little interest in any of the states involved concerning either of the two areas. It was felt that opposition to the extention of Daylight Saving Time would arise from school authorities, parents and the National Safety Council because of possible dangers of automobile accidents, particularly during the winter months, involving children waiting for school buses.

Evidence before the Committee falls short of demonstrating any state-wide interest in year-round Daylight Saving Time, and it would seem that action in Maine should be conditioned on that taken by the other New England States. Unless such interest developes, it can be assumed that there can be no hope for united action by the New England States in this area.

DISTRICT COURT SYSTEM

ORDERED, the Senate concurring, that the Legislative Research Committee be, and hereby is, requested to study the desirability of creating a district court system integrating the activities of the present municipal court and trial justice systems: and be it further

ORDERED, that the Legislative Committee report the results of its findings to the 99th Legislature.

The Legislative Research Committee, under joint legislative order, has inquired into the desirability of replacing municipal and trial justice courts with district courts. The Committee held one public hearing on August 11, 1958, principally attended by proponents advocating the adoption of the district court system.

Concern with the municipal and trial justice courts in this State reflected in the legislative order requesting this study has previously resulted in prior studies of the problem (for the most recent, see: Report of the Judicial Council, January 30, 1957).

From these and other sources, the Committee has accumulated ample evidence to point up weaknesses in the present system of municipal and trial justice courts. The mere recognition of these weaknesses, however, does not presuppose an adequate legislative remedy. And the need for an intensive study of the technical problems involved seems essential prior to undertaking any drastic legislative reorganization of the lower courts.

The Committee regrets that it is inadequate to undertake a study of such magnitude. It urges, therefore, that a professionally conducted survey be authorized by the 99th Legislature for the purpose of developing concrete recommendations whereby the administration of justice in the lower courts of the State may be strengthened.

FEDERAL FLOOD INSURANCE

VOTED, that the Legislative Research Committee

(a) Study State participation in the federal flood insurance program enacted by the Federal Flood Insurance Act of 1956, Public Law 1016, 84th Congress, Second Session; and

(b) Inquire into existing statutes and constitutional provisions concerning the extent to which the State may engage in the federal flood insurance program and the flood zoning requirements; and

That the Committee report to the next Legislature the results of its study with such recommendations as it deems appropriate.

Federal legislation to establish a flood insurance program enacted under the Federal Flood Insurance Act of 1956 became the subject of a proposed joint order before the regular session of the 98th Legislature directing Legislative Research Committee study and consideration of the possibility of future state participation in the program. The lack of federal implementation of the program arising out of the failure of Congress to appropriate necessary funds for a program characterized as "too indefinite and costly" eleiminated the apparent necessity for such a study and the joint order failed of passage.

Initiatory action was subsequently taken by the Legislative Research Committee at its first regular meeting on July 18, 1957, at which time, it was voted to study those areas set forth under the original order. One public hearing was held by the Committee on Fedruary 11, 1958. Testimony taken be-

fore the Committee at the hearing indicated that the matter had been "shelved" by Congress for the present and probably would not be considered for another year.

While it seems evident that it would require only a major flood disaster and attendant public interest to reactivate the program, in view of the fact that the program could remain dormant indefinitely for lack of federal funds, the Committee feels that no further study is warranted until such time as definite federal legislation is enacted.

FREEDOM OF ACCESS TO PUBLIC RECORDS AND PROCEEDINGS

VOTED, that the Legislative Research Committee study and report its conclusions and recommendations to the 99th Legislature on the question concerning the freedom of access to state, county and municipal records and proceedings, whether administrative, judicial or legislative in nature; and

That the Committee shall particularly concern itself with the freedom of access that may or may not be available to accredited news gathering organizations.

The Legislative Research Committee, upon motion made at its first regular meeting on June 18, 1957, voted to study the freedom of access to public records and proceedings, previously the subject of a joint order presented at the regular session of the 98th Legislature which failed to pass. The Committee held one public hearing on February 11, 1958 which was principally attended by invited representatives of press, radio and television organizations.

Opponents, if any, to the position taken by the heads of these organizations that the public should be legally entitled to full and complete information concerning the affairs of state and local government did not appear. Neither did evidence given before the Committee disclose substantial excesses of governmental secrecy in municipal and state affairs. Rather, the position was sustained that such instances in which access to records and meetings was denied are isolated and highly infrequent.

The development of conditions adverse to freedom of access

to public records and proceedings, now alleged to exist in both federal and state government, has resulted in nation-wide agitation for legislation requiring all levels of government to open their prodeedings to the public and to permit public inspection of their records. Government in this State while apparently less deserving of criticism in these areas than the so-called larger states with their complexities of government has not been immune to the criticism raised by the proponents of such legislation. In the absence of constitutional and statutory guarantees of public accessability to records and proceedings of government within the states, it would seem that abuses of secrecy could imperil individual rights and democratic processes of government. But the Committee is aware that governmental secrecy, while dangerous, is in many instances essential to both the efficient operation and very existence of government.

At the suggestion of the Committee at its public hearing on February 11, 1958, the press and radio and television associations of the State prepared a preliminary draft of legislation designed to secure to the public reasonable access to state and municipal records and proceedings. This draft was submitted to the Committee for its consideration on February 19, 1958, and represented the thinking of the Maine Daily Newspaper Publishers Association, the Association of Radio and Television Broadcasters and the Maine Weekly Press Association. The draft as submitted while favored by

the Committee in principle was rejected in part as being too broad in scope to the extent of denying any non-public deliberations in the conduct of the affairs of state and local government. The draft as revised by the Committee, after a study of similar acts in other states, though essentially conforming to the original draft in requiring governmental agencies in the State to hold their meetings in public and allowing public access to their records, differs in that it would permit executive sessions and certain records specifically identified by law to be kept confidential. This recommended legislation, the Committee feels, accomplishes a proper compromise between extremes and secures for both press and public reasonable guarantees of accessibility to information concerning governmental activity within the State.

The following act is therefore recommended by the Committee to the consideration of the 99th Legislature:

AN ACT Relating to Freedom of Access to Public Records and Proceedings.

Be it enacted by the People of the State of Maine, as follows:

R. S., c. 1, §§36-41, additional. Chapter 1 of the Revised Statutes is amended by adding 6 new sections to be numbered 36 to 41, to read as follows:

'Freedom of Access to Public Records and Proceedings.

Sec. 36. Declaration of public policy; open meetings. The Legislature finds and declares that public proceedings

exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that their deliberations be conducted openly.

Sec. 37. Definition of public proceedings. The term "public proceedings" as used in sections 36 to 41 shall mean the transaction of governmental functions affecting any or all the citizens of the State by any administrative or legislative body, or agency of the State, or any of its political subdivisions, when such administrative or legislative body, or agency is convened for the purpose of transacting the governmental function with which it is charged under any statute or under any rule or regulation of such administrative or legislative body, or agency.

Sec. 38. Meetings to be open to the public. All public proceedings shall be open and public, and all persons shall be permitted to attend any meeting of these bodies or agencies, except as otherwise provided.

Sec. 39. Executive sessions permitted. Nothing contained in sections 36 to 41 shall be construed to prevent these bodies or agencies from holding executive sessions from which the public is excluded, but no ordinances, resolutions, rules, regulations, contracts or appointments shall be finally approved at such executive sessions.

Sec. 40. Records available for public inspection. Every citizen of this State shall, during the regular business hours

of all such bodies or agencies of the State, or any political subdivision thereof, have the right to inspect the public records of such bodies or agencies and to make memoranda abstracts from the records so inspected, except as may now or hereafter be otherwise specifically provided by law.

Sec. 41. Violation. A violation of any of the provisions of sections 36 to 41 or the wrongful exclusion of any person or persons from any meetings for which provision is herein made shall be punishable by a fine of not more than $500 or by imprisonment for less than one year.'

PLUMBERS AND ELECTRICIANS LICENSING LAW

ORDERED, the Senate concurring, that the Legislative Research Committee be, and hereby is, requested to study the laws relating to electricians and plumbers, particularly the phases of such laws which prohibit apprentice electricians and journeymen plumbers from performing their work except under the employment and supervision of master electricians and plumbers; and be it further

ORDERED, that the Legislative Research Committee be, and hereby is, requested to study the impact of such laws on small towns, the end result of such laws being that many small towns are without electricians and plumbers to the detriment of the health and safety of the inhabitants of such towns, and be it further

ORDERED, that the Legislative Research Committee report the result of its findings to the 99th Legislature.

The Legislative Research Committee, under joint legislative order, has studied those provisions of the plumbers and electricians licensing law which prohibit apprentice electricians and journeymen plumbers from working except under "direct supervision" of master electricians and plumbers. Committee findings as to the effect of such licensing provisions upon the availability of electricians and plumbers in small Maine towns were determined on the basis of testimony and materials submitted by various trade organizations and interested persons appearing before the Committee at its public hearing on May 14, 1958, and from consultation with representatives and members of the plumbers and electricians examining boards.

The problems created in many of the small towns and resort areas of this State by the lack of persons licensed to do

electrical work largely result from restrictive provisions in the electricians licensing law (R. S., c. 82) which prohibit electricians, other than those holding a master's license, from making electrical installations, unless in the employ and under the supervision of a master electrician. These provisions, though absolutely essential to maintaining the high standards imposed for public protection, have otherwise eliminated the services of persons competent to make certain electrical installations such as house wiring, but are lacking in the necessary technical qualifications to pass the prescribed examination for master licensing.

The high standards of competency required by the Electricians Examining Board for issuance of a master electrician's license under the Electricians Licensing Law pertain to many or all of the diverse and complicated phases of electrical work. These standards, besides being beyond the limited skill, knowledge and experience of the average small town electrician, greatly exceed the necessary qualifications needed to adequately serve the demands of a small town. This problem was recognized by the Board which attempted to minimize its effect through issuance of "limited" master's licenses, commensurate with necessary knowledge and experience needed to competently handle minor electrical work. Issuance of these licenses by the Board, however, was challenged, and in a subsequent opinion, the Attorney General ruled that the Board had

no authority to restrict a license defined by statute. Limited electrician's licenses may be issued by the Board under section 2, subsection VI to install and service specific types of electrical equipment.

Legislation recommended by the Committee would amend section 2, subsection VI to give the Board authority to establish the licenses necessary to correct the problem. The all-inclusive master's license, with the protection it affords, would be retained; but the Board, under the amendment proposed, could issue limited electrician's licenses, not only for the installation and service of specific types of electrical equipment, as now provided, but in addition, would be empowered to issue limited licenses to permit specific electrical installations. Persons licensed under section 2, subsection VI are exempt from the prohibition which prevents electricians from engaging in electrical work except under the employment and supervision of a master electrician. This exemption would be extended via the amendment proposed to include those persons licensed to make specific electrical installations.

The Committee is not in favor of making a like recommendation with respect to plumbers, since the diversity and complexity factors which characterize electrical work are not found in the plumbing trade. The absence of such factors leads the Committee to believe that limited plumber's licenses are not feasible.

The following act relating to electricians is recommended by the Committee for the consideration of the 99th Legislature:

AN ACT Relating to Limited Electrician's Licenses.

Be it enacted by the People of the State of Maine, as follows:

R. S., c. 82, §2, sub-§VI, amended. Subsection VI of section 2 of chapter 82 of the Revised Statutes, as enacted by section 1 of chapter 413 of the public laws of 1955, is amended to read as follows:

'VI. A limited electrician's license to install and service the electrical work related to a specific type of electrically operated equipment or to specific electrical installations shall be granted to any person who has passed a satisfactory examination before the ~~State~~ board ~~of Examiners of Electricians~~. It shall specify the name of such person who shall be limited to engage in the occupation of installing and servicing the electrical work related to the type of equipment or to the specific electrical installations only authorized by this license.'

SMALL LOAN STATUTES

ORDERED, the Senate concurring, that the Legislative Research Committee be, and hereby is, authorized and directed to study the "Small Loan" Statutes and via report to the 99th Legislature indicate its recommendations related to amendments, if any, that should be considered that may strengthen and improve the "Small Loan" Statute. The Committee is particularly requested to report upon the need for uniform and mandatory annual reporting to the State Banking Commissioner by each of the small loan licensees.

ORDERED, the House concurring, that the Legislative Research Committee be, and hereby is, authorized and directed to study, in addition to the study authorized by Joint Order H. P. 1090, the operations of banking institutions insofar as such operations relate to "Small Loans;" and be it further

ORDERED, that the Committee report the results of its study to the 99th Legislature.

The Legislative Research Committee, as directed by joint legislative order, has studied the provisions of R. S., c. 59, §§210-227, commonly known as the "Small Loan Statutes." The Committee held one public hearing on April 8, 1958, at which persons representing various small loan organizations in the State appeared and testified.

Evidence presented before the Committee did not indicate any wide-spread or serious violations of the State Small Loan Statutes, nor did it disclose failure in their enforcement. The comparatively few instances in which violations have been reported, in each case, have been promptly investigated by the Banking Department and necessary adjustments made. From information gathered by the Committee, it is readily apparent that the type of lending and credit transaction regulated by

these statutes has shown a continuous growth and fulfills an essential need in the business economy of the State.

Though largely unsupported by factual evidence, this rapid growth of the small loan industry, coupled with the lack of mandatory reporting, present problems of supervision under the present law which the Committee believes requires additional regulation by legislation in the nature of mandatory and uniform reporting by all small loan licensees. At the present time, annual reports are furnished the Banking Department by such licensees on a cooperative basis, but the reports are not mandatory and in a few cases are not submitted. It is the Committee's belief that this additional statutory requirement will tend to insure better compliance with the law thereby minimizing abuses.

Legislation recommended by the Committee in substance would require small loan licensees to submit a uniform and mandatory report in such form and at such periods as the Bank Commissioner should require, as well as information which would indicate the rate of return realized on the total investment in each small loan organization. It is the feeling of the Committee that the Bank Commissioner now has adequate authority and procedures to supervise the small loan activities of banks.

The following act, for these reasons, is recommended by the Committee to the consideration of the 99th Legislature:

AN ACT Relating to Report by Licensed Small Loan Agencies.

Be it enacted by the People of the State of Maine, as follows:

R. S., c. 59, §215-A, additional. Chapter 59 of the Revised Statutes is amended by adding a new section to be numbered 215-A, to read as follows:

'Sec. 215-A. Reports. Every person, copartnership or corporation licensed under the provisions of sections 210 to 227 shall annually on or before the 15th day of April file with the Bank Commissioner a report for the preceding calendar year, or for such portion of the preceding calendar year during which said person, copartnership or corporation has been licensed under the provisions of sections 210 to 227. Such report shall give information with respect to the financial condition of such licensee and shall include: the name and address of the licensee; balance sheets at the end of the accounting period, a statement of income and expenses for said period; a reconciliation of surplus or net earnings with the balance sheets; a schedule of assets used and useful in the small loan business; an analysis of charges, size of loans and types of security on loans of $2,500 or less; an analysis of delinquent accounts; an analysis of suits, repossessions and sales of chattels and such other relevant information as the Bank Commissioner may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business conducted by such licensee within the State. Such report shall be made

under oath and shall be in the form prescribed by the Bank Commissioner who shall make and publish annually an analysis and recapitulation of such reports.

In the event any person or corporation holds more than one license in the State, a composite annual report, covering all such licensed offices, may be filed.[1]

UNFAIR TRADE PRACTICES

ORDERED, the House concurring, that the Legislative Research Committee be, and hereby is, requested to study practices of marketing and pricing of commodities in commerce, with particular attention to the impact of such practices which tend to restrict free competition and which adversely affect small businesses. The Legislative Research Committee shall report the results of its findings to the 99th Legislature.

The Legislative Research Committee, as directed by joint legislative order, has studied restrictive practices which adversely affect commodity marketing and pricing. The first of two well-attended public hearings was held by the Committee on November 12, 1957, dealing generally with the subject of unfair commodity marketing and pricing practices. On February 11, 1958, Senator Wilmot S. Dow appeared before the Committee and discussed gasoline prices, dealer problems and practices affecting the distribution and sale of gasoline; areas of study covered by his proposed order introduced at the 98th Legislature calling for investigation by a legislative committee to be especially created for the purpose. This order did not pass. The Committee, at its executive session on the same day, voted to incorporate the areas defined under the Dow proposal in its study of unfair trade practices, having regard to methods and costs of distribution of automotive fuel and heating oils and pricing as originally contemplated. The second and final public hearing of the Committee on the study of unfair trade practices was held on March 11, 1958

and concentrated upon those special areas set forth under the Dow proposal.

The Committee has at least on one occasion, namely in its recommendations concluding its extensive study of the milk control law, expressed its attitude toward governmental regulation in the conduct of business. It has been opposed to the development of bureaucratic government fostered upon the citizens of this State under the guise of much needed state regulation and control. And while it is sympathic to the needs and demands of small business and would not ignore the pressing necessity for their continued existence to the economy and well-being of the State, it does not believe that principles of free enterprise should be compromised on the basis of unsubstantiated allegations of unfair and discriminatory business practices. Nothing presented at either public hearing held by the Committee suggested inadequacies in the present state law (R. S., cc. 59, 100, 183, 184). Nothing indicated a needed change in the law. Nothing was indicated which was not presently covered by law. In brief, there was no "clear and convincing" evidence of unfair and deceitful practices or acute legislative need to substantiate the claims of proponents for "adequate" state business practice legislation. Within the limits of state authority, nothing was raised before the Committee on either occasion but what adequate enforcement of the present law would not cure. This is not to say, however, that abusive situations cannot arise

which might make future changes in the law necessary. The Committee believes that this State in order to thrive must foster a free business economy limited with a minimum of necessary restraints. In the absence of a clear showing of business abuse, it seems better not to alter those principles which best insure a free business economy. Business will flourish and business will decline according to management and needs. "There can be no competition without competitors." To establish state regulatory laws incident to these principles is often a necessary evil to protect the public. Beyond this, the Committee recognizes no valid justification.

USE TAX COLLECTION

ORDERED, the House concurring, that the Legislative Research Committee be, and hereby is, directed to study the question of enforcement proceedings related to the Use Tax; not by way of limitation, the Committee is specifically directed to study the question of Use Tax Collection from receivers or shippers of consumer goods delivered to Maine users from out-of-state sources of supply.

If in the opinion of the Committee corrective legislation is desirable in the Sales and Use Tax statutory provisions, the Committee shall so report to the next regular session of the Legislature by bill, resolve or otherwise.

The Legislative Research Committee, acting under joint legislative order, has studied use tax collection on consumer goods used in Maine and purchased from out-of-state sources. One public hearing was held by the Committee on June 11, 1958, at which officials of the Sales Tax Division of the State Bureau of Taxation, representatives of various organizations and interested persons appeared and testified. Information guiding the Committee's study was in large part derived from materials and authorities furnished by the Sales Tax Division and counsel for the Maine Merchants Association.

Use taxation, as described in the opinion of the United States Supreme Court in the case of Miller Brothers Company vs. Maryland, 347 U. S. 340 (1954), is ". . . a relatively new and experimental form of taxation. Taxation of sales or purchases and taxation of use or possession of purchases are complementary and related but serve different purposes. The former, a fiscal measure of considerable importance, has

the effect of increasing the cost to the consumer of acquiring supplies in the taxing state. The use tax, not in itself a relatively significant revenue producer, usually appears as a support to the sales tax in two respects. One is protection of the State's revenues by taking away from inhabitants the advantages of resort to untaxed out-of-state purchases. The other is protection of local merchants against out-of-state competition from those who may be enabled by lower tax burdens to offer lower prices. In this respect, the use tax has the same effect as a protective tariff becoming due not on purchase of the goods but at the moment of bringing them into the taxing states."

The collection of use taxes by the taxing state presents difficult legal and administrative problems. Recovery of the sales-use tax with respect to commercial and industrial firms and individuals provides an exception in sales-use tax enforcement in that these users are generally registered under the Sales and Use Tax Law and subject to mandatory reporting and auditing procedures.

The problem of use tax collection results primarily in cases of so-called "consumer purchases" by persons for their individual use. From the legal standpoint, as between the purchaser and out-of-state seller of consumer goods, the seller cannot be held liable for the sales tax in the absence of activity within the taxing state which would provide

sufficient grounds under state and federal law to subject him to the taxing state's jurisdiction. This problem does not arise in connection with the purchaser of consumer goods who resides within the taxing state and is subject to its taxing authority. "The collection of the use tax from inhabitants is a difficult administrative problem, and if out-of-state vendors can be compelled to collect it and remit it to the taxing state, it simplifies administration" (Miller Brothers Company vs. Maryland). Such a procedure, though desirable from an administrative standpoint, unless special circumstances exist, is contrary to state and federal law, and limits recourse of the taxing state under a sales-use tax law to the resident purchaser. An extension of the State's taxing authority to impose liability on out-of-state sellers is impossible under present United States Supreme Court decisions. The Maine Sales and Use Tax Law (R. S., c. 17), within the limitations imposed by these decisions, subjects all sellers to liability to the maximum extent permitted. Just as previously indicated, these legal limitations do not apply to purchasers in the State who deal with out-of-state sellers. Such purchasers are subject to the provisions of the State Sales and Use Tax Law and are liable for the use tax imposed.

The practical reasons why the collection of use taxes due from "consumer purchasers" is difficult may be found

in the statement of the State Tax Assessor presented to the Committee at the June 11th hearing. "In the case of the average individual, however, the practical difficulty of obtaining compliance is very great. For the most part, voluntary compliance is not forthcoming; and even if voluntary compliance were forthcoming the expense to the State of handling thousands of accounts where individual liability might run from a few pennies to a few dollars a month would render the proposition impractical from a financial standpoint. Compulsion would be even more impractical since there is neither any way in which it can be determined who is purchasing out-of-state and is thus subject to liability; nor any way, in the case of the average individual, of verifying such liability since the average individual is unlikely to maintain the records necessary to establish such liability." From evidence presented to the Committee, it would appear that any voluntary compliance by consumer purchasers with the Maine Sales and Use Tax Law is negligible.

The following breakdown, prepared by the State Tax Assessor, reflects the current enforcement status of each type of out-of-state consumer purchase:

"1. Mail order sales, where the seller maintains no place of business in this State:

Such sales are those made by mail order houses selling by catalog in this State, where the place of business

is located elsewhere and where the business is conducted solely by mail. In such cases, Maine has no jurisdiction whatsoever over the seller, and the only possibility of recovering tax would be through the use tax liability of each individual purchaser.

2. Charge account sales by metropolitan stores located outside this State.

As in the case of mail order houses noted above, the seller cannot be held liable for tax in the case of sales made outside Maine by such metropolitan stores as Macy's, Jordan Marsh Company, etc. for delivery into Maine to Maine customers. Again, the only possibility of recovering tax is through the individual customers.

3. Sales made outside this State by retail merchants located outside this State, where delivery is made into Maine by the merchant himself:

This is a situation which occurs in some of the border areas of Maine where a store located in a town adjoining the Maine border sells to Maine people and delivers by its own truck to Maine customers, but where there is no activity of the seller in this State other than delivery of merchandise. Under a decision of the United States Supreme Court in the case of Miller Brothers Company v. Maryland 347 U. S. 340 (1954) that Court has held that the delivery by a seller of his own goods into a sales tax state does not constitute sufficient activity within that state to subject the seller to the taxing jurisdiction of that state. Consequently, it is not possible for a state to require such a seller to account for tax on such sales.

4. Sales outside this State by a retailer who also maintains a place of business in Maine:

In the above instance, the seller carried on no activities in Maine, or carried on only the activity of delivering his goods in Maine. Presumably, if the seller engages in further activities in this State, he may become subject to the jurisdiction of this State. Clearly, where a seller maintains a retail outlet in this State he becomes liable not only for sales made through that retail outlet, but also for use tax on sales made outside this State for delivery into the State. This is specifically provided for in section 4

of the Sales and Use Tax Law which specifies that 'Retailers registered under the provisions of section 6 or 8 shall collect such tax (i. e., the use tax) and make remittance to the Assessor.' So far as is known to this office, there has never been any question as to the validity of such a provision in the law. It is under this provision that the large mail order houses which maintain places of business in Maine are required to report and pay tax not only on sales made in Maine but also on mail order sales made elsewhere but for delivery in Maine.

5. So-called "Merchandise Clubs:"

The merchandise club situation differs from any of the above in that the club secretary normally is placed in the legal status of an independent contractor, rather than as an employee or agent of the entity actually carrying on the business. Consequently, it has been found in the case of merchandise clubs having headquarters outside Maine that it is not possible to force the parent organization to register and account for tax. While this situation is preferable to one where each individual customer must account for tax, it is still cumbersome and unsatisfactory because of the small volume of sales made by each secretary, and because of the frequency with which individuals enter into and drop out of such activity. Nevertheless, the Bureau of Taxation has attempted to keep people engaged in these activities fully informed of their responsibilities, and a large number of so-called secretaries have been and are registered and reporting tax sales made by or negotiated through them.

In each of the situations outlined above, if tax is to be recovered, it must be recovered from the customer (or from the merchandise club secretary, who is only a short step removed from the customer). Unless the customer voluntarily reports and pays tax it would appear, for reasons noted, to be impractical to attempt to follow up the matter except in those cases where the existence of liability is known and determinable. Such cases are infrequent, but they include those where conditional sales contracts may be recorded locally, where U. S. Customs information may be available, or where the item purchased must be registered for use in Maine.

It might be well to note a basic distinction between the situation outlined above relating to a general sales and use tax and that prevailing in the case of cigarettes. In

the latter case Federal legislation enacted a few years ago requires a person selling cigarettes and shipping them into a taxing state to notify the tax authority of that state of the shipment. Through this Federal legislation it has been possible to eliminate almost entirely evasion of state tax on such transactions. There is however no such Federal legislation relating to other types of sales; nor is there any present likelihood of extending this type of procedure beyond its present limits."

At the suggestion of counsel for the Maine Merchants Association legislative proposals of the Association were studied by the Committee to determine if the changes suggested would substantially assist enforcement of the Sales and Use Tax Law. These proposals, which would amend sections 4, 6 and 16 of chapter 17, were submitted to the Attorney General for an opinion as to their effect on use tax enforcement. The Attorney General in his opinion of July 10, 1958, ruled that the proposals submitted would not improve the enforcement of the present law, but might have the effect, if adopted, of subjecting the law to constitutional litigation.

After a full and complete study of the problems and suggestions for improved enforcement of the use tax, the Committee finds: 1) that compliance by Maine consumers with the use tax provisions of the Sales and Use Tax Law is negligible as it relates to out-of-state purchases; 2) that the present Sales and Use Tax Law, with respect to state tax jurisdiction over out-of-state sellers, is constitutional; providing the State Tax Assessor with the maximum authority allowed under current decisions of the United States Supreme

Court to enforce the payment of tax from out-of-state sellers; 3) that adequate authority is conferred upon the State Tax Assessor under the present Sales and Use Tax Law to enforce the use tax provisions on out-of-state sales to Maine consumers.

The Committee concludes, notwithstanding the present authority of the State Tax Assessor, that the administrative problems involved in the enforcement of the use tax on out-of-state sales to Maine consumers impose severe limitations upon his ability to collect the use tax. The Committee also concludes that further legislative efforts to enforce the tax will neither be productive of increased revenues to the State, nor successfully result in closing certain loopholes in the sales tax structure.

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Ninety-Eight Series

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