

MAINE STATE LEGISLATURE

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April 14, 1924

To Hon. Fred F. Lawrence, Bank Commissioner
Re: Mortgage on Real Estate including some Personal Property

You ask for an opinion upon the question whether the fact that a limited amount of personal property is included by way of additional security in a mortgage on real estate deprives the notes or bonds secured by such mortgage of their tax exempt character.

The importance of this question, both as it applies to individuals and ~~as to individuals~~ and savings banks holding mortgages and corporation mortgage bonds, entitles it to careful consideration and I have given it such thought and study as the time at my disposal had allowed.

Included in the enumeration of securities which savings banks are allowed to deduct from the average amount of their deposits as tax exempt are the following:

"investments in such notes and bonds secured by mortgages on real estate in this state as are exempt from taxation in the hands of individuals" R. S. Chap. 9, Sec. 61; P.L. 1923, Chap. 168.; and

"all loans of money made by an individual or corporation and secured by mortgage on real estate situated in this state." Sec. 6, paragraph XIII.

I do not find that this question has ever been before the courts of this State, but in Massachusetts under a statute very similar to ours it has been held that bonds secured by a mortgage which included personal property as well as real estate were not entitled to the exemption accorded to real estate mortgage securities. Brooks v. West Springfield, 193 Mass. 190. It is true that in that case the security was situated in several states and included its trademark and franchises but the ground upon which the decision rests is that property is not exempt unless such an intention is clearly manifested by express enactment; that an exemption is not to be created by implication and that the inclusion of personal property in a real estate mortgage so changes its character as to exclude it from the exempted class.

The court said that while the validity of the instrument was not affected by the security being mixed, no statutory method is provided for a separation of the real from the personal security, nor is there any provision that if so separated the valuation of the personal property can be deducted leaving the statute to apply to the remainder.

The Maine statute contains no provisions which would indicate that the legislature contemplated any mixed security or any division of the mortgage between real and personal property.

As was said in the Brooks case, while there may be no sound fiscal reason for not including mortgages of personal property in the exempted list, the statute expressly refers only to realty, to which of necessity it must be confined.

It appears from a letter in the files of the department written in 1915 that Hon. Wm. R. Pattangall, then Attorney General, was of the opinion that the exemption in the statute applied only to mortgages of real estate and not to those containing personal property also, and Hon. Guy H. Sturgis, Attorney General in 1917, seems to have held the same view.

Based upon the above citation and the reasoning therein, together with the opinions referred to, it is my opinion that a mortgage note or bond to be entitled to exemption or classed as a deductible security must be secured by real estate alone and any personal property included in the mortgage makes it taxable.

William H. Fisher
Deputy Attorney General