

MAINE STATE LEGISLATURE

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February 2, 1938

Honorable Frank H. Holley
State Tax Assessor
Augusta, Maine

Dear Mr. Holley:

In your letter of January 28, you ask my opinion on the matter of assessment of a tax on buildings situated on leased land in the unorganized territory of the State. I understand that you have been assessing such property as personal property, and that your inquiry is as to whether or not you should continue to do this, or should adopt a policy of assessing them as real property.

Under the provisions of Chapter 15, section 9, of the Revised Statutes, real estate shall be assessed in the town where the estate lies to the owner or person in possession on the first day of each April.

In Chapter 1, section 6, paragraph X, of the Revised Statutes, the words "real estate" are defined as including lands and tenements and hereditaments connected therewith or rights thereto and interests therein.

Any person who leases, either orally or by a written lease, any land in the unorganized territory of the State, or is permitted to occupy it by the owner and does so occupy it and erects a building on it, has an interest in the land which is taxable as real estate and both the land and the buildings erected on it are real estate and are so taxable.

The question was before our Supreme Court in the case of Foxcroft v. Straw in 1895. The Court's opinion is found in 88 Maine Reports, at Page 76. In this case defendant built a cottage upon a lot of land under a parcel license given by a Camp Meeting Association which was the owner of the land. The town laid tax upon defendant's cottage as real estate and brought an action of debt to collect the tax. The Court said that the defendant, by virtue of the parcel license became a tenant in possession of the land. It quoted the provisions of Chapter 15, section 9, above quoted, and also quoted the provisions of Chapter 1, section 6, paragraph X, above quoted, and then held that the cottage and the land on which it stood might properly be assessed as real estate to the defendant as tenant in possession.

In my opinion, therefore, you can properly tax as real estate any such buildings erected on leased land in the unorganized territory.

Very truly yours,

FUB H

Attorney General