

MAINE STATE LEGISLATURE

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April 14, 1938

Honorable Frank H. Holley
State Tax Assessor
Augusta, Maine

Dear Mr. Holley:

In your letter of January 28, 1938 you ask my opinion in the matter of assessment of a tax on buildings situated on leased land in the unorganized territory of the state in which territory your office is charged with the duty of collecting taxes on real and personal property.

Your inquiry as I understand it, is directed particularly to situations existing in this territory where you find buildings erected on land which is leased by the owner of such land to the owner of the buildings, and where you desire to assess a tax, either real or personal, on the buildings, to the owner of the buildings, and to assess a tax on the land on which the buildings are situated to the owner of the land, and that you have in the past assessed a tax on such buildings to the owner of the buildings as personal property.

There is no doubt that under our statutes and decisions, you may assess a tax on such buildings and the land on which they are situated, as real property, to the owner of the buildings, if you so desire, on the theory that the owner of the buildings who has erected said buildings under a lease either parol or written, from the owner of the land, has enough interest in the land as the result of his lease, to justify the assessment against the owner of the buildings of a real property tax on both land and buildings.

This question was before our Supreme Court in the case of Foxcroft vs. Stray in 1898 as reported in 86 Maine Reports at Page 76. In this case, defendant built a cottage upon a lot of land under a parol license given by a campmeeting association which was the owner of the land. The town assessed a tax upon the defendant's cottage and the land on which it stood as real estate, and brought an action of debt to collect the tax. The Court said that the defendant owner of the cottage, by virtue of the parol

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license, became a tenant in possession of the land, and 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.

The problem which you have outlined to me, however, is not covered by the decision in this case, because you tell me that you desire to continue to tax the land to the owner of the land and to tax the buildings to the owner of the buildings.

This situation is different from the case above cited and our courts have not passed directly on it.

The Supreme Judicial Court of Massachusetts has, however, ruled directly on this point, interpreting a statute similar to ours, in the case of McGee et als vs. City of Salem which is reported in 149 Mass. at Page 288. In that case some greenhouses were built by the owner on land of another, and a tax was assessed to the owner of the greenhouses as real estate, and the land on which they stood was taxed to the owner of the land as real estate. The court held that "a building affixed to land cannot be taxed as real estate except in connection with the land to which it is affixed." and that a tax upon such buildings apart from land and assessed as a real estate tax, is invalid.

Hence, if you continue as you say, your policy of taxing the land on which such buildings stand as real estate and to the owners of the land, and not to the owner of the building, in my opinion you should tax the buildings to the owners of them as personal property.

In similar situations you have these three courses open to you.

1. You may tax BOTH land and buildings to the owner of the land, on the principle that you are not obliged to inquire into private contracts between the parties.
2. You may tax BOTH land and buildings to the owner of the buildings on the basis of the decision in the case of Foxcroft vs. Straw cited herein.
3. You may tax the land as real estate to the owner of the land and the buildings as personal property to the owners of the buildings.

In view of the absence of provisions in our Revised Statutes clearly stating the manner in which such situations shall be handled by your office and by the assessors in the several cities and towns, I suggest that some amendment to our statute be adopted at the next session of our Legislature.

Very truly yours,

Francis J. Burkett
Attorney General