

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1941--1942

Section 30 of Article II, Chapter 216, Public Laws of 1931, provides that the Board of Equalization “. . . shall consist of the State Tax Assessor as Chairman, serving without additional salary, and two associate members, one of whom shall be of the minority party not otherwise connected with the State government or local government thereof . . .”.

In view of the wording of the statute quoted, it is the opinion of this department that Mr. Williams may not be Mayor of Augusta and also a Member of the Equalization Board, and that his resignation would be in order when he becomes Mayor.

Deputy Attorney General

January 13, 1943

From:

Frank A. Farrington, Deputy Attorney General

To:

Harry V. Gilson, Commissioner of Education

*Subject: Amended Census of Freeman Township, Franklin County*

In a memorandum dated January 8th, you ask for an opinion as to the validity of an amended census for Freeman Township as of April 1st, 1941, compiled for the purpose of ascertaining a school tax in accordance with the provisions of Chapter 19, Revised Statutes of 1930, as amended.

You enclose as paper #1, the original census and later amendment in accordance with later information to correct errors in the original census; paper #2, copy of school tax as assessed by the State Tax Assessor; paper #3, letter from Mr. Ralph M. Simmons; paper #4, paper from E. E. Carville; affidavits and other papers marked exhibit #5; paper #6, showing result of investigation by Mr. DeCosta, School Agent.

In the opinion of this department, since there appear to be 200 persons resident of Freeman Township, the amended census is valid for the purpose of ascertaining school tax in accordance with the provisions of Chapter 19, Revised Statutes of 1930.

We are returning, herewith, all those papers enclosed with your memorandum.

Deputy Attorney General

January 14, 1943

To:

Alfred W. Perkins, Commissioner

Insurance

From:

The Attorney General

*Policy Form 1650, Modern Woodmen of America*

I have your memorandum of January 13th. The Supreme Court of the United States in the case of *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 69 Law Ed. 783, used the following language:

"The indivisible unity between the members of a corporation of this kind in respect of the fund from which their rights are to be enforced, and the consequence that their rights must be determined by a single law, is elaborated in Supreme Council R. A. v. Green, 237 U. S. 531, 542, 59 L. E. 1089, 1100, L. R. A. 1916 A, 771, 35 sup. cit. 794. . . . We need not consider what other States may refuse to do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicile. It does not matter that the member joined in another State."

The petitioner, Modern Woodmen of America, is a fraternal beneficiary society incorporated in Illinois. The by-law referred to "has been held valid and binding upon the members of a corporation by the Supreme Court of Illinois, although they had become members before the change. Steen v. Modern Woodmen, 296 Ill. 104; 17 A. L. R. 406; 129 N. E. 546."

The Courts of Maine would feel themselves bound by the decision above cited of the U. S. Supreme Court, inasmuch as it involves a conflict of laws between States. Therefore, I believe that if an action were brought in the courts of this State on a policy of the Modern Woodmen of America, which policy contained the cited Article 17, the courts of Maine would follow the rule laid down in the Mixer case.

Your second question, to wit, "If this Department can require the elimination of the disappearance clause as being unfair to the beneficiary," is more difficult to answer. Modern Woodmen of America is a fraternal beneficiary association, the provisions concerning which are covered by chapter 61 of our Revised Statutes. Section 9 provides, among other things, that "If he (the Insurance Commissioner) deems it expedient, he will license such associations to do business in this state in accordance with the provisions of this statute." This language is very broad and apparently gives the Insurance Commissioner great power of control over such associations. That control, of course, must be used in a reasonable fashion. If, in your opinion, the disappearance clause as provided in Article 17 of the policy is "unfair to the beneficiary," it is my opinion that you have the right to require that that clause shall not be attached to policies used in the State of Maine.

FRANK I. COWAN

Attorney General

To:  
A. L. Kane, Controller

January 14, 1943

From:  
The Attorney General

I have your memorandum of December 30th asking whether or not the Controller is vested and imposed with direct responsibility and authority with respect to items 1 to 11 inclusive under Section 10, Chapter 216 of the Public Laws of 1931.