

# MAINE STATE LEGISLATURE

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Mar. 17, 1943

Harold I Goss, Secretary of State  
The Attorney General

*Question re: fee  
to be paid in 1943  
W. G. Miller*

Licensing of University of Maine Vehicles

I have your inquiry of March 16th, in regard to the legality of registering motor vehicles owned and operated by the University of Maine without charging a fee therefor.

P. L. 1941, Chapter 224 provides as follows: "No motor vehicle or trailer shall be operated, upon any way unless the same is registered and equipped in accordance with the provisions of this chapter."

R. S. Chapter 29, Section 58, as amended by P. L. 1941, Chapter 221, reads in part as follows: "All motor vehicles owned and used by the State or any municipality or corporation therein shall be registered but shall be exempt from the provisions of this chapter as to payment of registration fees..... The secretary of state is hereby authorized to issue registration certificates and registration plates without fee to Federal and State governmental agencies, not otherwise required to be registered under the provisions of this chapter." The question then follows, Is the University of Maine an instrumentality or agency of the State of Maine so as to be exempt from the payment of a fee under the provisions of the above quoted statute?

In the case of Orono vs. Sigma Alpha Epsilon Society, 105 Maine, 214, pages 219ff, Judge Cornish discusses the status of the University of Maine. He says: "The University of Maine, while chartered by the State and fostered by it, especially in recent years, is not a branch of the State's educational system nor an agency, nor an instrumentality of the State but a corporation, a legal entity wholly separate and apart from the State. The defendant seeks to class it as a State institution in the same sense as are the public schools or the normal schools, but such is not its legal status." The Court then goes on to compare the normal schools and the University of Maine showing that the normal schools are strictly a part of our educational system and are agencies of the State.

In contrast the Court cites the history and the legal status of the University of Maine which was created under Chapter 532, P. & S. 1865 authorizing a corporation to be known as "The Trustees of the State College of Agriculture and Mechanic Arts" to take advantage of an Act of Congress bearing date of July 2, 1862, and establish and maintain a college. The Court says: "A separate and distinct corporation

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was established, and the separation between the college and the State thus created by the charter has always been observed and maintained.....No appropriation was made by the State to the institution for ten years after its incorporation, but by Chapter 100, Resolves of 1875 the sum of \$10,500 was donated..... Annual appropriations have been made since that time with the exception of 1879 in varying amounts..... Such gifts, however, cannot change the character or legal status of the institution any more than smaller gifts to academies and private hospitals could make them a part of the sovereign State. In 1897 the name of the corporation was changed..... to the University of Maine.

"This change of name did not change the status of the institution or work its adoption as a part of the State, or make its property the property of the State..... It is nowhere recognized as a part of the educational system of the State. The legal status of this corporation has been, and is, the same as that of the other colleges in Maine, chartered by Massachusetts or by Maine, Bowdoin College, Colby College and Bates College.

"The difference between the relation of the normal schools and the University of Maine to the State is paralleled in the difference between the various so called public or general hospitals of the State, and the two hospitals for the insane. The former are doing a necessary and charitable work and are recipients of the bounty of the State, but the latter alone represent represent the State itself in its sovereign capacity along charitable lines. The former are apart from the State, the latter a part of the State. Actions at law would lie against the former as against any other corporation, but not against the latter as no suit lies against the sovereign power."

From the above it is very apparent that the University of Maine is not an agency or instrumentality of the State.

It is true that R. S. Chapter 19, Sections 112-119, inclusive, provides for a mill tax "for the support of the University of Maine". It further provides for a certain amount of supervision over the finances of the university and states, in Section 112, that "as the State is providing large appropriations for the support of the University of Maine, the State should have a more direct connection with its affairs both financial and educational". The legislature therefore provided that the State Commissioner of Education "shall be ex officio a member of the board of trustees". The statute provides for the treasurer and the treasurer's report. It further provides that the State Auditor "may appoint a resident auditor for the University of Maine.....the salary and just expenses of the resident auditor to be paid from the State Auditor's appropriation".

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In these statutory provisions in regard to the University there is, however, no suggestion that the corporation is surrendering its entity nor giving up any of its privileges or powers as a private institution. The University accepts the Commissioner of Education on its board. It accepts the provisions of law in regard to the treasurer, and it accepts the appointment of its auditor by the State Auditor. It also accepts the provision of law that the salary and expense of the resident auditor should be paid by the State, and it accepts the money raised by the State through a tax of one mill on a dollar upon all the property in the State for the support of the University. In none of these do I find that the University of Maine is any less a self-contained private educational institution than is any one of the other three colleges of the State.

Under the circumstances the Secretary of State certainly is not justified in issuing automobile registrations to the university of Maine without charging a fee therefor.

Frank I. Cowan  
Attorney General

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