

MAINE STATE LEGISLATURE

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March 5, 1946

To David H. Stevens, State Tax Assessor

Taxation of Owl's Head Airport

I have your memo of February 18th in which you state that the City of Rockland has an airport located in the Town of Owl's Head. This airport is about to be released to the City of Rockland by the United States Navy and apparently the city plans to lease the port to some private individual or organization; and you request an opinion as to whether or not the airport will be taxable by Owl's Head after the lease is consummated.

You will note that Section 6 of Chapter 81, R. S. 1944 provides that the property of any public municipal corporation appropriated to public uses, if located within the corporate limits or confines of such public corporation, is exempt from taxation. In 1941, under the provisions of Chapter 183, paragraph I of Section 6 of Chapter 13 of the Revised Statutes of 1930 was amended by adding the following:

"Also all airports and landing-fields and structures erected thereon or contained therein, of public municipal corporations, whether located within or without the limits of such public municipal corporations."

This indicates that there is a conflict in the laws when reading the whole section together with the wording of the amendment, Chapter 183, P. L. 1941, which indicates that this is class legislation, but as it is the law, it seems to have been the intent of the legislature to exempt airports from taxation.

You will recall that the Supreme Court, as recently as January 7, 1946, has held as follows:

"The public property of the state and that of its governmental divisions is presumptively immune from taxability,"

and then the Court went on to say as follows:

"but that the immunity did not result from a want of legislative power to impose taxation on some publicly owned property at its election and construed the law as then phrased as an exercise of that power subjecting the property of one municipality situate in another to taxation unless expressly exempted."

In the case of Whiting vs. Inhabitants of Lubec, 121 Maine 121, the Court decided definitely that land did not come within the defined exemptions and that the real estate of one municipality situate within the confines of another should be taxed therein on the tax valuation applicable to private owners; i. e., with recognition of any increment traceable to its availability for development as a mill privilege.

The opinion in the case of Bangor vs. City of Brewer was a four to two decision, and taking the language from this opinion of the majority of the Court, I am of the opinion that airports and landing fields and structures erected thereon were expressly exempted by Chapter 183, P. L. 1941, which places this property in a different category than the property of other municipal corporations.

Our Courts have held in other jurisdictions that it is not required that all general laws shall be equally general. A law legislating for a class is a general law when it is for a class requiring legislation peculiar to itself in the matter covered by law.

So I would advise Owl's Head not to assess the real estate of the airport against the City of Rockland, unless it wants to test the case in court.

Ralph W. Farris
Attorney General

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