

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

as the entire remuneration which they receive is not less than \$1200 per year, from the personnel department of the employer. In other words, this is not a matter about which the administrative authority should be too technical, rather basing each case of exemption on the facts given the Commissioner by the inspector.

RALPH W. FARRIS
Attorney General

June 10, 1948

To Ernest H. Johnson, State Assessor

Re: Corporate Franchise Tax, R. S. Chapter 14, Sections 102-108

My understanding is that when we are notified by the Clerk of Courts of the filing of a bill in equity for dissolution, notice of which must be given to the Attorney General in accordance with statute, we notify the Secretary of State, and that office in turn notifies the State Tax Assessor. Whether or not the State Tax Assessor should discontinue assessing the corporate franchise tax should depend on the nature of the bill and the appointment of receivers.

In the case under consideration, the business was an active and profitable one. The bill was brought because of a fight amongst the stockholders for the control of the corporation. That, however, is a rare case. By far the majority of the cases are those where the corporation has either ceased to do business or is so hopelessly insolvent that liquidation and dissolution are sure to result.

Our Court has held that a franchise tax may not be assessed against a corporation in receivership, where dissolution and liquidation of the assets are the main purpose. On the other hand, courts have generally held that where a receiver continues and operates the business, the corporation is subject to the franchise tax. It is otherwise where the receiver is merely in possession to liquidate.

Therefore, I would advise you not to discontinue corporate franchise tax assessments, unless receivers have been appointed by the court, as, when receivers are appointed, the corporation "thereafter (has) no right to exercise for itself any of the privileges conferred upon it by the State." *Johnson vs. Johnson Bros.*, 108 Maine 272, at page 275. This tax, it is there said, is "in the nature of an annual license fee for the right to continue to exercise the privileges conferred upon it by the State."

ABRAHAM BREITBARD
Deputy Attorney General

June 16, 1948

Hon. John M. Dudley, Judge Calais Municipal Court . . .

I acknowledge receipt of your letter of June 15th regarding the alleged illegal possession of perch which, on the facts agreed upon, were caught in waters of New Brunswick. The catch, while lawful in New Brunswick, was in excess of the legal limit in Maine. Your letter seems to indicate that the arresting warden was under the impression that the Department of Inland

Fisheries and Game had a policy that persons possessed of fish, as in these circumstances, were subject to prosecution in Maine, notwithstanding the fact that the fish were caught in waters outside of the State.

I inquired from the Commissioner and he informs me that he is unaware of any such policy. The question has always been whether the fish were caught in our waters and whether the claim that they were caught in foreign waters was a sham.

As I read our statute, Section 37 of Chapter 33, being the Ninth Biennial Revision, the prohibition is directed specifically to waters of this State, and a reading of the context would indicate to me that the possession which is made an offense necessarily relates to fish taken and caught in the waters of this State.

On the conceded facts I should be of the opinion that no crime has been committed within the meaning of our statutes. See in this connection *Woods vs. Perkins*, 119 Maine 257, and *State vs. Bucknam*, 88 Maine 385. . . .

ABRAHAM BREITBARD
Deputy Attorney General

June 23, 1948

To Fred M. Berry, State Auditor

Re: Duties and Repsonsibilities of the Department of Audit relating to the University of Maine

I have your memo of June 14th relating to the above entitled subject and have been giving this considerable study, because of the several citations in your memo, together with an opinion of former Attorney General Cowan who cites the *Orono v. Sigma Alpha Epsilon* case, 105 Maine 215. He states in the last paragraph of his opinion, on page 182, Report of the Attorney General, 1941-42,

"From the above it is plainly evident that the University of Maine is a private institution having all the rights and privileges of any private corporation within the limits of its charter. That charter is subject to modification, just as the charters of every other corporation in the State of Maine set up during the last hundred years are subject to modification. The fact that the legislature can modify the charter and at times has done so, does not change the nature of the college as a private institution, any more than the right of the State to change the charter of the Todd-Bath Shipbuilding Company changes the nature of that corporation."

The legislature in 1945, under the provisions of Chapter 98 of the Public Laws of 1945, declared the University of Maine to be an instrumentality and agency of the State for the purpose for which it was established and for which it has been managed, etc., under the provisions of the Private and Special Laws of 1865 and supplementary legislation relating thereto; but it is my opinion that the 1945 Act did not alter the provisions of Section 1 of Article I of Chapter 216 of the Public Laws of 1931 as cited in the third paragraph of your memo, for the reason that said provision was not repealed in the Revision of 1944. If you will consult page 2240, Volume II, R. S. 1944, under the Repealing Act, you will find that this provision was specially excepted from the Repealing Act.