

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1947 - 1948**

1. "An Indian born in Canada, who has no real estate, but has lived in Maine nearly all his life, wishes to buy a resident license. Is he entitled to this, if not how can he become a citizen?"

*Answer.* Under the provisions of the Inland Fish and Game Laws this person could procure only a non-resident license, not being a citizen of the United States, or being an alien and owning no real estate. An Indian born outside the United States may become a citizen by naturalization. He may apply for naturalization in either the Federal Courts or the Superior Court of the State at Bangor.

2. "A woman resident of Maine marries a man who is a Non-Res. and is in the Army, they move from place to place outside of Maine for several years. They come to Maine for a vacation and the woman wants to buy a resident license, claiming she has never become a resident of any other state. Is she entitled to a resident license?"

*Answer.* By our statutes, Chapter 3, Section 4, it is provided,

"For purposes of voting, office holding, or serving on jury, husband and wife may be deemed each to have a separate residence; such residence to be determined as in the case of other persons."

If this woman satisfies the town clerk that she was domiciled in Maine before her marriage and never intended to abandon her domicile and he is satisfied that she retained her domicile in Maine, in my opinion she would be entitled to a resident license. The question is one of fact, to be determined from all the facts in the particular case.

3. "On a river such as the Penobscot, would the East and West Branches come under the same law as the river proper, that is would the law governing the river also govern the branches or would they come under tributaries?"

*Answer.* The East and West Branches of this river are not tributaries as defined by the Inland Fish and Game Laws.

ABRAHAM BREITBARD

Deputy Attorney General

August 31, 1948

To Ernest H. Johnson, State Tax Assessor  
Re: Northeast Aviation Company

I have your memo of August 20th, stating that you are in receipt of a letter from the Northeast Aviation Company, which reads as follows:

"We are inclosing gasoline exemption form which we are not familiar with as to its disposition and feel that you may be of assistance to us in what method or procedure should be used by us to get this State Tax refund represented by the inclosed certificate."

You also enclose a certificate of exemption of foreign diplomatic and consular officers from motor fuel tax, which is a federal proposition and does not apply to the State of Maine.

You refer to a ruling by former Attorney General Franz U. Burkett, addressed under date of October 25, 1939, to Frank H. Holley, then State

Assessor, in which he states that he does not know of any grounds on which such exemption would be justified in this State.

I ruled on this matter of exemptions on May 14, 1945, in a letter to Governor Hildreth in which I stated:

"While this office is cognizant of the close coöperation of the Governments of the United States and Canada, yet it cannot render an opinion refunding money collected in excise taxes from the Canadian Government, in the absence of treaty or statutory provisions.

"In the case of *Madden v. Commonwealth of Kentucky*, 309 U. S. 83, which overruled the former decision in *Colgate v. Harvey*, 296 U. S. 404, the Court stated the following rule:

"'In the States there reposes a sovereignty to manage their own affairs except only as the requirements of the Constitution otherwise provide. Within these constitutional limits the power of the States over taxation is plenary.'

"And the Supreme Court held in the case of *United States Trust Company of New York v. Helvering*, 307 U. S. 57,

"'The right to exemption cannot be implied. Exemptions from taxation do not rest upon implication.'"

It is still my opinion that in the absence of treaty or statutory provisions, the right of exemption of foreign diplomatic and consular officers from payment of motor fuel tax to the State cannot rest on implication.

RALPH W. FARRIS  
Attorney General

September 7, 1948

To Fred M. Berry, State Auditor  
Re: Legislative Research Committee

I have your memo of September 2nd concerning the enactment of Chapter 392, P. L. 1947, re-creating a Legislative Research Committee with a Director, which Act provides that the President of the Senate shall appoint three Senators, and the Speaker of the House seven Representatives who shall constitute this Research Committee. You state that the legislature appropriated approximately \$34,000 per year to operate this department, which is more or less under the supervision of said Director, and your question is whether or not the expenditures made in this department are subject to audit by the State Department of Audit.

It is my opinion that this is purely a legislative committee and is exempt from audit by your department, under the provisions of the Administrative Code Law.

RALPH W. FARRIS  
Attorney General