

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

In answer I will say that it is my opinion that they are deductible except by companies in States that have a retaliatory law. It is my understanding from your memo that the mortuary dividends and the maturity dividends are in reality an excess premium or over-charge for the purpose of building up a reserve beyond the reserve called for by the tables. The tax is paid once on the premium, and for that reason the so-called mortuary and maturity dividends, in my opinion, should be deductible under Section 135.

RALPH W. FARRIS
Attorney General

December 29, 1948

To E. L. Newdick, Secretary, Seed Potato Board
Re: Payment in Lieu of Taxes

In reply to your letter of December 29th, inquiring whether the State Seed Potato Board would be justified in paying to the Town of Masardis some amount in lieu of taxes, which would compensate the town for its loss when the State acquired the land in question to grow seed potatoes, I would advise that the title to this property is in the State of Maine, and the State would not be subject to the tax by the town, and unless legislation specifically authorizing the State Seed Potato Board to pay a sum in lieu of taxes were enacted, it would have no authority to do so.

The problem is one that should be presented to the legislature.

ABRAHAM BREITBARD
Deputy Attorney General

December 29, 1948

To Corporation Division, Secretary of State

A question has arisen as to the organization fee to be paid for the use of the State on a corporation organized under Chapter 294 of the Public Laws of 1945, "An Act concerning Agricultural Coöperative Associations," which repealed and replaced R. S. Chapter 31 of 1944.

I understand from Miss Tibbetts that you had an oral ruling that the organization fee under the former act was governed by Chapter 49.

Under the terms of the present act, Section 6 provides that a fee of \$5 shall be paid to the Attorney General and the Secretary of State respectively, and the Register of Deeds shall receive for recording such certificate a fee of \$5.

Then under Section 26 it is provided that domestic associations and foreign associations permitted to do business in this State shall pay an annual license fee of \$10, which shall be in lieu of all other corporation and franchise taxes.

No other provision for the payment of fees is found in this act. On the other hand provision is made for the recording and filing of the certificate, what the certificate shall contain, by whom it shall be signed, the requirement that it be examined by the Attorney General and certified by him as

properly drawn, and the requirement that it be recorded in the Registry of Deeds in the county where the corporation is located and that within 60 days after the organization meeting a copy certified by the Register of Deeds shall be filed in the office of the Secretary of State. Then comes the provision for the payment of specific fees above quoted.

In view of these express provisions, which make no reference to any other provision in law, I am of the opinion that the fees prescribed by Chapter 49 are not applicable, since that refers to the certificates required to be filed under that section.

It is also to be noted that a corporation formed under this act may be organized with or without capital stock. If Section 10 of Chapter 49 were applicable, there would be no way of computing the fees to be paid where the corporation was organized without capital stock and on a membership basis.

The immediate question involved is a check for \$210 which is being held, computed on an increase of the capital stock of a coöperative association, pending the determination whether the organization fees of Chapter 49 are applicable. I therefore advise you that under the present act the only fees payable would be \$5 to the Secretary of State under Section 6, the \$5 for filing and recording an amendment to this certificate under Section 7, subdivision II, and in addition corporations of this type are required to pay an annual license fee of \$10. Check you now hold should be returned to the sender.

ABRAHAM BREITBARD
Deputy Attorney General