

MAINE STATE LEGISLATURE

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September 4, 1951

To Ernest H. Johnson, State Tax Assessor
Re: Tombstones as Real Estate

You have inquired whether monuments, headstones, footstones, etc., are real estate or personalty. . . .

Thompson on Real Property, Section 177, states the general rule: "Generally, a thing is deemed a part of the realty when it is embedded in the soil or permanently rests upon it. It is upon this principle that statues, ornamental shafts, and monuments are usually treated as part of the realty."

In Strickland vs. Parker, 1866, 54 Maine 263, the court held that a marine railway was real estate. The marine railway was not strongly dug into but rested on the surface of the ground. In rendering its opinion, it is interesting that the court cited with approval Snedicker vs. Warring, 2 Kernan 170, which held that a statue of Washington was real estate.

It has also been held in Maine that factory machinery is a fixture. So are telephone poles in place, Readfield Telephone Co. vs. Cyr, 95 Maine 287. See also Whiting vs. Lubec, 1922, 121 Maine 121, 126.

I have no hesitancy in advising you that a monument in place is real estate.

It follows that where a monument dealer makes a lump sum contract for the installation of a monument in place, he is selling real estate, unless the contract specifically provides that title to the stone passes prior to its installation. The whole essence of the transaction is that the lot in question shall be designated or ornamented with the monument. There seems to me no intent, as the transaction generally occurs, to buy a stone otherwise than in place. The practice of monument dealers is, as I understand it, always to sell the stone installed. Furthermore, the stone usually marks the last resting place of one or more members of a family, and they are generally permanently planted.

Such being the case, as the transaction is generally carried out, the monument dealer will pay a tax on his purchases of stones when he purchases them and will not charge a tax when he sells them, for the reason that he is not selling "tangible personal property".

Byrd L. Bailey
Assistant Attorney General

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