

MAINE STATE LEGISLATURE

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June 10, 1952

To Dr. H. B. Peirson, State Entomologist
Re: Helicopters coming to Maine for Public Health Work

At the request of Mr. Scott Higgins, I have forwarded to you an opinion respecting the non-taxability of helicopters coming from Massachusetts into Maine to do public health work for the State, without stating any reasons for my opinion. I do not like to have any opinion on file which contains no reason and I, therefore, write this letter which will fully explain matters.

Chapter 16, P. L. 1951, amends subsection I of Section 12 of Chapter 389, P. L. 1949:

"All non-resident aircraft pilots engaged in air commerce within the state shall register with the commissioner and pay a fee of \$15.00 for each registration."

Chapter 16 also provides:

"All non-resident aircraft owners engaged in air commerce within the state shall register such aircraft with the commissioner and pay a fee of \$25.00 for each registration."

If the above enacted language stood alone, it is obvious that all non-resident aircraft owners and pilots must pay the fees and, furthermore, all the non-resident aircraft would have to be registered, if engaged in "air commerce within the state".

"Air commerce" is defined by Chapter 389, P. L. 1949, in Section 3:

"'Air commerce' means the carriage by aircraft of persons or property for compensation or hire, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation."

Thus far the language indicates clearly a legislative intent to tax both the helicopters and the pilots coming into Maine, even though they are engaged in public health work and even though the State of Maine would simply be paying out a tax in order to collect a tax, plus the overhead cost of running the figures through the books of the State and the taxpayer.

I see no section of Chapter 389 or any other chapter whereby the Director of the State Aeronautics Commission is empowered to abate any tax. As awkward as the administration of an abatement statute often is, it seems to me a mistake to omit all powers of abatement. If we again have a widespread forest fire, we may invite numerous air pilots into the State for the protection of persons and property. As the provisions of the law now read that we have just considered, it would be necessary to stop these planes at the first Maine airport

and insist that their taxes be paid. Otherwise, such aircraft could not be the means of "carriage by aircraft of persons or property for compensation of hire", etc., such language being taken from the definition of "air commerce" in Section 3 of Chapter 389, P. L. 1949

What saves the situation, in my judgment, is Section 12-IV-C and G:

"C. An aircraft which is owned by a non-resident and registered in another state; . . .

"G. A non-resident piloting aircraft in this state who is registered in another state; . . ."

It may be argued that subparagraphs C and G have been repealed by Chapter 16, P. L. 1951. It is a well known principle of statutory construction that, however, we are to read the two sections together if we possibly can. We can do this by reading Chapter 16 as applying to all non-resident aircraft pilots who are not registered elsewhere and the aircraft of all non-resident aircraft owners which are not registered elsewhere.

Under all the circumstances, it seems to me so doubtful that any tax is owing either upon the aircraft or upon the pilots that the administrative officers of the State should make no effort to collect any such tax in this instance.

Another comment may be appropriate. Section 2 of Chapter 16, fully copied above, provides that every non-resident aircraft owner engaged in air commerce in Maine shall register such aircraft with the commissioner and pay a fee of \$25.00 for each registration." The excise tax is provided for in Chapter 264, Section 2, P. L. 1951. This recites, in part,

"Provided further, that a non-resident person registering a motor vehicle or aircraft in this state shall pay to the municipality of the state where he is occasionally or temporarily residing, or if there be no such residing place, then to the state the excise tax above provided. . ."

Thus, there is no excise tax unless the aircraft must be registered.

Boyd L. Bailey
Assistant Attorney General

BLB:gd