

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

July 31, 1952

To Scott K. Higgins, Director, Aeronautics Commission
Re: Fees and Registration

By your memorandum dated May 26, 1952 you have asked our opinion of a proposed order of the Maine Aeronautics Commission to the Director. The problem involves the demonstration of aircraft by bona fide dealers without the payment of burdensome fees.

At the outset two concepts must be kept clearly in mind, namely, registration of aircraft and taxation of aircraft. In regard to registration Section 12, Chapter 21, of the R.S. as amended clearly provides in Sub-sections I and II:

"I. No civil aircraft shall be flown in the state unless such aircraft and its pilot are properly licensed under federal law, nor unless they have an unrevoked and unsuspended certificate of registration as hereinafter provided.

"II. Aircraft: All aircraft owners resident in the state and operating planes in the state shall register such aircraft with the commission and pay a fee of \$1 for each registration."

Sub-section IV of the same section, which provides for exemptions from the registration requirements makes no exemption for aircraft owned and operated by bona fide dealers and used by them for demonstration. It is our opinion that the direction of the statute that the aircraft designated therein be registered is mandatory and cannot be abrogated by rule of the commission.

The taxation of aircraft is a separate concept and a brief outline of the scheme of taxation will be helpful at this point. Prior to recent legislation, aircraft were taxed as are other kinds of tangible personal property. By Chapter 358, P. L. 1949, the legislature added a new section 39-A to Chapter 19 of the R. S. which provides for an annual excise tax on aircraft in lieu of the personal property tax. By this section, as amended by Chapter 264, P. L. 1951, the excise tax is "subject to the same provisions and exceptions as apply to motor vehicles in sections 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47 (of Chapter 19), which can be applied to such aircraft." As a corollary thereto the legislature by Chapter 254, P. L. 1951, amended Section 40 of Chapter 19 to provide that no aircraft should be registered until the excise tax should be paid. Thus the two concepts are tied together.

In considering the exemptions from automobile excise tax found in Section 38, Chapter 19, R. S. 1949, as we are directed to do by Chapter 264, P. L. 1951, we note it reads in pertinent part ". . . provided, however, . . . bona fide dealers or manufacturers of motor vehicles, which motor vehicles are solely for the purpose of demonstration and sale and which constitute stock in trade. . . shall not be subject to the excise tax herein provided; . . ." Applying this provision to aircraft

as directed in Chapter 264, P. L. 1951, it must follow that aircraft held by bona fide dealers solely for the purpose of demonstration and sale and which constitute stock in trade are not subject to the excise tax.

The pivotal question then is whether Section 40 of Chapter 19, as amended, which prohibits registration until the excise tax is paid is applicable to prohibit such registration without payment of a tax where no tax is due. To answer other than that the statute does not apply would lead to a manifest absurdity. In addition, Section 40 purports to prohibit registration only where the registrant has not "paid the excise tax herein provided for." By its terms where no excise tax is provided for, Section 40 is not applicable.

In answer to your specific question, it is our opinion that the proposed direction is proper so long as it does not purport to direct the director to permit the operation of civil aircraft by bona fide dealers for demonstration without the certificate of registration as provided in Section 12, Chapter 21, R.S., as amended.

A caveat may be added here. In as much as the excise tax is ordinarily paid to the tax officials of organized municipalities, our opinion as to the applicability of the excise tax to dealers has no binding force on such officials. They are completely free to make their own decisions in this matter. However, as we have pointed out in detail, it is our opinion that the commission may issue registration certificates to "bona fide dealers or manufacturers of aircraft, which aircraft are solely for the purpose of demonstration and sale and which constitute stock in trade" without payment of an excise tax, for there is no excise tax due.

Miles P. Frye
Assistant Attorney General

MPF:mwd