STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

Chapter 298 of the Laws of 1949, and the restrictions upon membership would appear to depend upon ability to make that oath with understanding.

We find nothing in the law in reference to the age of 18 years. Children in this State are minors until the age of 21 is reached, but their ability to participate in this program is not this limited. It would appear not to be unlikely that a normal boy in his teens would be a proper subject to apply for membership in this organization, and if found satisfactory and capable of understanding the oath, would be eligible.

You enclosed a copy of your memorandum to county and local directors, which I think is very well stated and completely covers the matter.

NEAL A. DONAHUE
Assistant Attorney General

October 29, 1954

To Ronald W. Green, Chief Warden, Sea and Shore Fisheries
Re: Weir in Deorganized Town

This will acknowledge receipt of your memo of October 27th and attached petition to measure and lay out a weir or trap. You ask the procedure to be followed in obtaining a permit to build a weir in the deorganized Town of Edmunds. . .

The Town of Edmunds by a vote in 1937 agreed to accept the surrender of its organization. The town clerk certified to the Secretary of State on November 30, 1937, that the Town had so voted.

The State Tax Assessor, under provisions of our laws, was in control of Edmunds for a period of not more than five years.

Section 7 of Chapter 86, R. S. 1944, being that section pertaining to licenses to construct wharves and weirs, applies only to cities and towns and, in another section, islands. The Tax Assessor being no longer in a position to accept such petition and the provisions of Section 7 not extending to deorganized towns, this office is of the opinion that such license or permit to lay out a weir must be granted by the legislature.

JAMES GLYNN FROST
Deputy Attorney General

October 29, 1954

To Honorable Harvey R. Pease, Register of Probate, Lincoln County
Re: Inheritance Tax when Assets Pass outside of Will

You have requested an opinion on the inheritance tax liability of the executor or administrator when part of the assets pass outside the will, as by gift in contemplation of death, gift made or intended to take effect in possession or enjoyment after death or survivorship in joint tenancy.

Your inquiry relates to the revision of Probate Court Rules and Forms.

Section 20, Chapter 142, R. S. 1944, provides that executors and administrators shall be liable "on their administration bonds" for the inheritance tax. The statute continues:

> "Whenever an administration bond is waived . . . the judge of probate, notwithstanding such waiver, before granting letters testamentary or of administration, may, and if in his judgment the amount of any bequest or distributive share of the estate may be subject to a tax as hereinbefore provided, *shall* require a bond . . . sufficient to secure the payment of all inheritance taxes and interest. . ." (Underlining supplied)

In order for the judge to fix the amount of the bond, he must, of course, inquire what taxes the executor or administrator is liable for.

> "Administrators, executors, trustees, or grantees donees under conveyances or gifts made during the life of the grantor or donor, and persons to whom beneficial interest shall accrue by survivorship shall be liable for the taxes imposed by the provisions of Sections 1 to 41, inclusive, . . ." (Section 18, Chapter 142)

In connection with Section 18, one should read Section 6:

> "All property and interests therein which shall pass from a decedent to the same beneficiary by any one or more of the methods hereinbefore specified and all beneficial interests which shall accrue in the manner hereinbefore provided to such beneficiary on account of the death of such decedent shall be united and treated as a single interest for the purpose of determining the tax hereunder."

In short, the taxable interests passing to one person by will and outside the will must be aggregated for tax-computation purposes.

While Section 18 is extremely comprehensive, it is elementary that the inheritance tax is upon the right to receive; whence it follows that the Assessor is to tax each recipient for what that recipient receives. Conversely, the Assessor may *not* tax B for what A receives.

In conclusion, it is my opinion that the executor or administrator is liable for the entire inheritance tax on the share of each beneficiary or heir to the extent that the executor or administrator has ability to pay it. By "ability to pay" I do not refer to the total quantum of the estate. The fiduciary has ability to pay the tax on A's share only from money or property which the fiduciary has in his hands as executor or administrator which belongs to A. (Qualification: Real estate passing by devise or inheritance may not be in the hands of the executor or administrator but he is liable for the tax thereon. Sections 17 and 23).

To illustrate: A is beneficiary of a bequest of $1,000 and is a donee in contemplation of death of property worth $40,000. A is a nephew. The Assessor will compute the tax:

Value of share	$41,000	Tax
Less personal exemption	500	
	$40,500	
Taxable at 8%	25,000	$2,000
Taxable at 9%	$15,500	1,395
		$3,395

But the executor's liability is limited to $1,000.

The subject is annotated in 1 A.L.R. 2d at page 980. The editor finds it to be a general rule that if the executor or administrator "has paid or will be required to pay an estate or succession tax levied on or with respect to property which is not subject to administration, and the circumstances are such that the person who receives or is in possession of such property is liable for the tax, the representative has a right to reimbursement from such beneficiary." While this annotation may not seem in point, it seems to me that it is, because I do not think the representative would have a right to reimbursement if he were a mere volunteer.

While a good many cases could be cited, *Re Powell,* Montana, 101 P. 2d, 54, 128 A.L.R. 116, is of particular interest. The court held that an inheritance tax on an annuity policy could not be collected from the executor in a situation where the executor never possessed any property passing to the surviving beneficiary of the policy. The court discusses a previous holding that the executor was liable for the tax on non-testamentary assets, saying that in the former case the executor as such had funds of the beneficiary sufficient to cover the entire tax. . .

BOYD L. BAILEY
Assistant Attorney General

November 10, 1954

To William H. Morrison
Re: Autonomy of Towns

. . . In my capacity as legal counsel for the State Civil Defense and Public Safety Council, I am answering your letter of October 20, 1954, in which you ask, "How much autonomy does a town like Buxton have during period of non emergency under this law?" You have reference to the Civil Defense Law, and apparently your question is raised because of your objection to directives issued by Colonel Harry Mapes, Director of Civil Defense. Your attached letters show that Colonel Mapes has protested because audible alarms were not sounded during test alerts at Bar Mills.

Please be advised that local municipalities, as instrumentalities of the State, have only such autonomy as is expressly granted to them by the legislature or necessarily implied by the wording of the statute in question.

It has been the opinion of this office that Chapter 11-A of the Revised Statutes sets up a plan State-wide in its scope, whereby each political sub-