

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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-

division establishes its local organization in accordance with the State Civil Defense and Public Safety Plan and Program. See Section 8, Chapter 11-A.

Directives issued by Colonel Mapes are so issued in compliance with an over-all State plan and it is our further opinion that towns have no autonomy but should comply with the essence of the Act, which contemplates a program that will inure to the benefit of all the citizens of the State. Such complete cooperation as will very possibly be necessary one day can never be achieved unless all branches do their part.

JAMES GLYNN FROST
Deputy Attorney General

November 12, 1954

To R. R. Chaney, Secretary, Dealer Registration Board
Re: Principally Engaged, as applied to Partners

I have your letter of November 9th relating to Walter M. Smith and Gordon H. Morris, d/b/a/ Morris Motors, West Parsonsfield, Maine. The question apparently relates to the capacity of one Morris, who appears to be treasurer of said partnership, to spend the principal amount of his time in the business of selling automobiles. The Board is particularly interested in Section 19-F-II, which says that the Board may revoke the dealer registration plates of any registrant who is no longer principally engaged in the business of buying and selling motor vehicles.

The situation here is unusual in that Smith and Morris are partners and it would appear to be the partnership which is asking for the right to have dealer plates. Morris, it appears is a school teacher in Massachusetts, teaching automobile mechanics and registered in that State as a dealer. If Morris were asking for registration alone, I think you might well find that he was not principally engaged in the business of buying and selling motor vehicles; but Morris does not ask for that right, nor does Smith, but a partnership between these two gentlemen asks for registration. I think, therefore, that the question boils down to this: Will the partnership be principally engaged in buying and selling motor vehicles? If you answer that in the affirmative, then the plates must issue, even though Smith and Morris individually are not principally engaged in buying and selling motor vehicles.

We could have, by way of example, a situation where I as an attorney spend most of my time practising law, while I might enter a partnership agreement with X whereby we would go into the business of buying and selling motor vehicles, he doing the work and I putting up the money. I don't think that you could deny that partnership the right to have dealer registration plates on the ground that I am principally engaged practising law, because to do so would be unfair both to myself, with money to invest, and to X., a man who would not normally be able to transact business alone but could do so under a partnership agreement between the two of us.

ROGER A. PUTNAM
Assistant Attorney General