

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

“C. an aircraft not engaged in air commerce within the state which is owned by a non-resident and registered in another state, or otherwise qualified there;

“D. an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;”

Paragraph C. of subsection IV appears to be the only provision under which the corporation could possibly be exempt. So far as we can ascertain from the material supplied to us, on which the Civil Air Patrol bases its request for exemption from registration fees, the planes in question are not registered in another State by a non-resident, nor are they otherwise qualified in another State.

We therefore are of the opinion that the Civil Air Patrol does not fall within any provision exempting its planes from paying registration fees.

JAMES GLYNN FROST
Deputy Attorney General

March 18, 1957

To A. S. Noyes, Bank Commissioner

Re: Mortgages on out-of-State Property

We have your memo in which you make the following request:

“Will you kindly rule as to whether or not mortgage companies outside of Maine, selling or offering for sale loans secured by real estate mortgages on property outside of Maine, should be required to register with this department (Banks and Banking) as dealers in securities?”

It appears that some banking institutions and the Maine State Retirement System from time to time purchase out-of-state guaranteed mortgages. Such mortgages are purchased from companies domiciled outside the State of Maine. The payments of principal and interest due to the purchasers are also collected for a fee by the mortgage companies and remitted to the owners of the mortgage loans on an agreed basis.

Such mortgages are securities within the meaning of the Act:

“The term ‘securities’ shall include . . . notes secured by mortgages of real estate in this state. . . . The term ‘securities’ shall further include documents of title to and certificates of interest in real estate, including cemetery lots, and personal estate when the sale and purchase thereof is accompanied by or connected in any manner with any contract, agreement or conditions, other than a policy of title insurance issued by a company authorized to do a title insurance business in this state, under the terms of which the purchaser is insured, guaranteed or agreed to be protected against financial loss, or is promised financial gain.”

Section 228 of Chapter 59 defines the manner of solicitation for sale, offer for sale, or invitation for offers which, if carried on in this State, would require registration as a dealer in securities:

“No dealer in securities shall in this state, by direct solicitation or through agents or salesmen, or by letter, circular or advertising, sell, offer for sale or invite offers for or inquiries about securities, unless registered as a dealer under the provisions of the following sections. No sales-

man or agent shall in this state, in behalf of any dealer, sell, offer for sale or invite offers for or inquiries about securities, unless registered as a salesman or agent of such dealer under the provisions of the following sections.”

It is our opinion that such mortgage companies must register with your department as dealers in securities, if such sale or offering for sale is carried on in a manner embraced by the terms of Section 228, next above quoted.

JAMES GLYNN FROST
Deputy Attorney General

March 18, 1957

To David H. Stevens, Chairman, State Highway Commission

Re: Limitation of Access Rights

From time to time the problem of the liability for damages claimed because of loss of or limitation of access rights will arise. The only recognition of such a right in our statutes is in Section 8, Chapter 22:

“When an existing highway has been designated as, or included within, a controlled access highway by said commission, *existing easements* of access may be so extinguished by purchase or by taking . . .”

This language was taken from another State’s statute that was the model for our new controlled access law. Note that it says, “existing easements”. Obviously this does not create any new easement.

I know of no Maine case that has held that one can obtain a prescriptive right against the State. The right of reasonable access to one’s property is, of course, a vested right, but this does not mean the right to any particular access or the right to an unlimited number of places of access.

The overwhelming weight of authority has held that diversion of traffic is not legal damage. The State has the right to divert traffic for highway purposes without any liability to a by-passed abuttor.

Under the police power, which justifies control of traffic for the good of all, certain limitations of access will become necessary frequently. Under the Constitution, there is no compensation due for losses occasioned by the proper use of this power. There are numberless cases where local ordinances have caused heavy damages to individuals, but damages have not been allowed. The individual must suffer for the common good.

It might be argued in the (Frederick) French case that there is damage caused by limited of access. Since neither of the streets abutting this property is part of a controlled access highway, Section 8 is not involved. Since there was no taking of land or change in grade, there is no statutory damage. If it is argued that the use of the ways is such that it damages the property, and, therefore, is a taking of its value, and hence a legal taking, it will raise an issue that has not been decided by our courts. Obviously, the Joint Board should not attempt to resolve this question.