

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

The interpretation of this section requires that consideration be given to the word "primarily." Such consideration would mean that a truck registered under this section need not be used exclusively in the transportation of agricultural commodities connected with the farm of the registrant. If such truck is used primarily for the purposes set forth in this statute, then we think that the intent of the statute has been accomplished and that the truck may be used for other unrelated purposes, in addition to such primary use.

JAMES GLYNN FROST
Assistant Attorney General

May 16, 1958

To Harvey H. Chenevert, Exec. Sec., Maine Milk Commission

Re: Voting & Quorum

You have requested an opinion on the following fact situation:

The Maine Milk Commission is made up of seven members who are present at a meeting. In voting on a question, three members voted for a proposition, one voted in the negative and three abstained from voting. No required number of votes are necessary to carry an action under Chapter 33, Revised Statutes of 1954.

Would an action carry by the vote of three in the above-mentioned situation?

It is my opinion that the action has been legally carried. Referring to the *Manual of Legislative Procedure* by Paul Mason, Section 510 at page 348, it is stated: "A majority of the legal votes cast, a quorum being present, is sufficient to carry a proposition unless larger vote is required by a constitution, charter, or controlling provision of law, and members present but not voting are disregarded in determining whether an action carried."

Section 516 at page 363 states:

"There has been considerable discussion by the courts as to presumptions concerning the effect of members not voting. There appear to be two distinct situations:

(a) When only a majority of the legal votes cast is required, failure to vote or the casting of a blank ballot reduces the number of affirmative votes necessary to take an action. Under this situation a failure to vote has in part the same effect as a "yes" vote. The members not voting are sometimes said to be presumed to agree to abide by the decision of those voting."

Therefore, in your meetings, a majority of those *present and voting* would carry an action.

GEORGE A. WATHEN
Assistant Attorney General

May 21, 1958

To Ernest H. Johnson, State Tax Assessor

Re: Property Tax Exemptions for Veterans

. . . You inquire whether or not the real estate of a qualified veteran who has claimed an exemption under Paragraph III of Section 10 of Chapter

91-A is taxable by the operation of Section 4 of Chapter 91-A to a person who leases the real estate or has some other "interest by contract or otherwise."

The veteran's exemption appears to be both a meritorious grant and, in some cases, a financial aid to qualified veterans or their widows who have small estates.

The exemption of a qualified veteran's estate up to the value of \$3500 does not provide for a distinction between a veteran's home and his business property; either type of property may be exempt in whole or in part. Thus the exemption is not determined by the use which the veteran makes of his property. Compare, however, the test applied to the exemption under Section 10, Paragraphs I and II allowed Federal or state-owned property and charitable organizations. The use made of the property is the determining factor in allowing an exemption. In one case the use is a public use and in the other case a charitable use.

It should not matter whether a qualified veteran derives profit from his own proprietorship of a business situated on his property or derives a profit from the lease of his business property to another. The exemption should apply in either case. To hold that an interest by contract or otherwise is taxable to a person in possession of a qualified veteran's real estate would, to some extent, by operation of Section 14 of Chapter 91-A, operate to defeat the meritorious aspect of the exemption, since one-half of the tax paid by a tenant would be taxable to the landlord.

There are differences between the exemption allowed veterans and the exemptions allowed the Federal and State governments or charitable organizations. The exemptions to government-owned property and charitable organizations exempt the entire value of the property. However, the exemption to the veteran is only a partial exemption when his estate exceeds \$3,500. The exemption to government property and charitable organizations vests immediately by operation of Section 10 and may be divested by conditions subsequent, depending upon the use to which the property is put. However, the exemption to veterans does not vest immediately by operation of Section 10 but only upon condition precedent of registration as a qualified veteran for the exemption. Therefore, it would appear that the words, "real estate exempt from taxation," as used in Section 4 of Chapter 91-A, were not intended to include the limited, conditional exemption of a qualified veteran's estate, but refer primarily, yet not exclusively, to the exempt real estate of government or charitable organizations.

For the reasons outlined above, an "interest by contract or otherwise" in the real estate of a qualified veteran who has claimed an exemption with regard to the specific real estate in question should not be taxed to the person in possession except as the value exceeds \$3,500 or that portion of the \$3,500 claimed by the qualified veteran.

RICHARD A. FOLEY
Assistant Attorney General

May 27, 1958

To Max L. Wilder, Bridge Engineer, State Highway Commission

Re: Need of Permit to Build Tukey Bridge

You have requested my opinion as to the liability of the State of Maine to obtain the permit required under the provisions of Chapter 192 of the Private and Special Laws of 1917, as amended.