

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

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.

The second paragraph of Section 5 therein says:

“The creation or maintenance of any obstruction in any of the navigable waters of said harbor, or in any part of said harbor under the jurisdiction of said board (except by the United States), without first obtaining a written permit from said board, is hereby prohibited; and it shall be unlawful to enlarge, or extend, any wharf heretofore built, or to build, or commence to build, any wharf, pier, dolphin, bulkhead, or other structure, or dump any stones, or other material into any of the waters, or upon any part of the flats, or to excavate any part of said harbor, or to fill in any part thereof, or modify the course, location or condition of the water of said harbor without such permit.”

And the first sentence of Section 6 therein says:

“Application for permission to build or extend wharves, etc., how made; procedure. Any person, firm or corporation intending to do any of the acts referred to in the preceding section, shall first make written application to said board, stating the location, limits and boundaries, as nearly as may be, of such intended erections, extensions, obstructions, filling or excavating, and ask a permit therefor.”

In the first place, it should be noted that this act combined the two previous Boards of Harbor Commissions of Portland and South Portland into one Board. The Commission is an agency of the State, but definitely of a municipal variety rather than state-wide in its scope.

Nowhere in the act does it say in *definite* language that it intends to give the Board control over bridges built by the State.

In the second paragraph, where the broad powers are given to the Board, the language describes wharves and similar structures, none of which come within the concept of a bridge. It does include the dumping of material and excavation, but again with no reference to bridge building.

In Section 6, “any person, firm or corporation” is required to obtain a permit. It is very doubtful if this classification can be considered broad enough to include the State of Maine.

It is an accepted principle of statutory construction that the State cannot be sued without its express consent (*Brooks Hardware v. Grier*, 111 Me. 78), and that consent must be *clearly* manifested, not implied (127 Mass. 43, 46). Any statutes in derogation of sovereignty must be strictly construed. (82 C.J.S. 936; 49 Am. Jur. 315).

If the legislature intended to give this Board the power to grant, and therefore the power to *deny* a permit to the sovereign State to carry out its governmental duty to build a bridge, it obviously would have limited its sovereignty.

This must be done in clear, unequivocal language! There is no such clarity in this law. In fact, there is every indication that the draftors of the act were thinking of the harbor facilities only, and that, *if* they thought of Tukey Bridge, they considered it a going concern, and not involved in the duties conferred.

I can see no reason to change my opinion of October, 1956, wherein I said that the legislature did not intend to give the Board control over the building of State bridges, and that the State did not need the permit.

L. SMITH DUNNACK
Assistant Attorney General