

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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July 16, 1959

To: Frank S. Carpenter, State Treasurer

Re: Levy on Accrued Salary of State Employee by U. S. Internal Revenue

In reply to your oral request for an opinion as to whether or not you are required to honor a notice of levy of property of a State employee in your possession by the U. S. Internal Revenue Service:

The case of *Sims, Petitioner, v. U.S.A.* (March, 1959) seems to be in point. There the U. S. Supreme Court stated:

“ . . . and it is quite clear, generally, that accrued salaries are property and rights to property subject to levy. In plain terms Section 6331 (26 U.S.C., Supp. V) provides for the collection of assessed and unpaid taxes ‘by levy upon all property and rights to property’ belonging to a delinquent taxpayer. Pursuant to that statute a regulation was promulgated expressly interpreting and declaring section 6331 to authorize levy on the accrued salaries of employees of a state to enforce the collection of any Federal tax.

“ . . . We think that the subject matter, the context, the legislative history, and the executive interpretation, i.e., the legislative environment, of section 6332 make it plain that Congress intended to and did include States within the term “person” as used in section 6332.

“Accordingly we hold that sections 6331 and 6332 authorize levy upon the accrued salaries of state employees for the collection of any federal tax.”

Section 6332 of the Code further reads: “Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand . . . surrender such property or rights, etc.”

It is our opinion that the accrued salary of a State employee may be levied upon and that you as State Treasurer, having that accrued salary in the form of a check in your possession, must honor a levy of the Internal Revenue Service.

FRANK E. HANCOCK
Attorney General

July 24, 1959

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Authority of Credit Union to Purchase Real Estate

We have your request for an opinion regarding the authority of a State chartered credit union to purchase real estate.

Section 20, Chapter 55 of the Revised Statutes of 1954 provides for the investment of funds, and sections 21 through 23, both inclusive, set standards for the making of such loans.

There is no authority for credit unions to purchase or deal in real estate; therefore, it is my opinion that State chartered credit unions cannot do so. This opinion does not imply that a credit union may not make loans secured on mortgages on real estate, nor is it intended to dissuade a credit union from pursuing any legal remedy in the event of the default of a mortgage loan.

GEORGE A. WATHEN
Assistant Attorney General

August 5, 1959

To: Robert G. Doyle, State Geologist, Economic Development

Re: Certain legal questions raised by the Beers Co. concerning their impending lease negotiations with the Mining Bureau

I have your request for an opinion concerning the rights of lease holders on public lands.

The basic issue is the relationship between the holders of grass and timber rights and the holders of mining rights on this land.

Section 8 of Chapter 39-B provides that a person who has located a claim and been issued a mining lease:

“. . . shall have the right of way across any lands owned or controlled by the State to and from said location, and the right to take from public reserved lots all wood and timber necessary to be used in the operation of the mine, by paying to the State or to the owner of the right to cut timber and grass, a fair and just price for the same.”

From this language it would appear that there will be no difficulty between the different lease holders. This statute sets out the rights and duties of each.

GEORGE A. WATHEN
Assistant Attorney General

August 6, 1959

To: Fred L. Kenney, Director, Administrative Services, Education Department

Re: Computation of Subsidy under the Sinclair Act

I have your request for an opinion regarding the following questions:

Question 1: How are the subsidies computed in the case where an individual town is admitted after January 1 of the legislative year to a school administrative district in existence on that date?

This question is based on the law which will become effective on September 12.

It is my opinion that we should use the town computation plus 10% in addition to the district's own computation to arrive at the total computation for subsidy. A new district is not being formed, but this is merely