

# 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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"2. Will the State of Maine qualify a foreign corporation licensed by SBA to do business under the Small Business Investment Act of 1958 to do business in the State of Maine?"

Answer: Yes.

Prior to the amendment of our law, we have refused to accept such corporations because they were plainly in violation of our law which prohibits businesses organized under the general law from lending money for profit.

However, Chapter 178, Public Laws 1959, amended Chapter 53, section 8, as follows:

"Nothing in this section shall be construed to prevent the organization of small business investment companies organized to carry out the provisions of the Small Business Investment Act enacted by the 85th Congress of the United States, and acts amendatory thereto and additional thereto and which become such corporations under said Small Business Investment Act of 1958. Such small business investment companies shall not be deemed banking corporations or institutions."

As a result of the above-quoted amendment, we have answered your questions in the affirmative.

Very truly yours,

JAMES GLYNN FROST  
Deputy Attorney General

October 5, 1959

To: Ronald W. Green, Commissioner of Sea & Shore Fisheries

Re: Quahog Tax Law

We have your request for an opinion concerning the proceeds of taxes collected under Sections 294 through 301, both inclusive, of Chapter 16 of the Revised Statutes of 1954. As I understand it, at the present time one of the taxpayers is litigating the question of the constitutionality of this tax law.

Your specific questions are:

- "1. Will I be able to spend money received as a result of this tax which may be paid by other dealers?
- "2. Should I discontinue this program and refrain from spending money until this question has been finally determined by the courts?
- "3. In the event that the court rules in favor of Mr. Laskey, will the State be responsible for refunding all tax money received since this law became effective?"

In reference to your first question, I would answer in the affirmative. You are charged under Section 301 with the expenditure of the funds for certain purposes as you may determine.

The second question should be answered in the negative.

In reference to your last question, it is a fundamental principle that no person may sue its sovereign without its consent.

I presume that the payments made by the other taxpayers have been on a voluntary basis. 51 Am. Jur. 1005, Section 1167 states:

“ . . . Taxes voluntarily paid without compulsion, although levied under the authority of an unconstitutional statute, cannot be refunded or recovered back without the aid of a statutory remedy . . . ”

51 Am. Jur. 1012, Section 1179, provides:

“The recovery of illegally exacted taxes is solely a matter of governmental grace. In the absence of an authoritative statute, taxes voluntarily, although erroneously, paid cannot be voluntarily refunded, although there may be justice in the claim . . . ”

The general rule that money voluntarily paid with full knowledge of the facts applies to taxes. See *Smith v. Readfield*, 27 Me. 145; *Abbott v. Inhabitants of Bangor*, 56 Me. 310; *Creamer v. Bremen*, 91 Me. 508. Each of these cases involves property taxes, but the principle enunciated has application here.

I do not believe it necessary to discuss the personal liability of a tax collector nor the right of recovery of a tax paid under duress when in the hands of a tax collector.

The State may by appropriate legislative means refund this tax but this would not, of course, concern you.

GEORGE A. WATHEN  
Assistant Attorney General

October 9, 1959

To: Major General E. W. Heywood, Adjutant General

Re: False Alarms — Calling Out of National Guard

You point out in your memo of October 5, 1959, that some unknown individual called WGAN radio and requested that the Maine Army National Guard be alerted; this without authority or knowledge of your office or any National Guard unit.

You inquire if such action is punishable or unlawful.

From our examination of the laws, it appears that only one section would be available under which prosecution could be had for such action. If the individual placing such call asserted or alleged that he was placing the call as a department head or agent, then we would be of the opinion that the following statute would apply:

Chapter 143, section 10. “Falsely assuming to be or act as a state official. Whoever knowingly and falsely assumes to be the head of any department or commission of the state, or the deputy, or inspector thereof, or the agent thereof, or any state official, and to act as such, or knowingly and falsely assumes to discharge any of the duties of such official, or knowingly and willfully invites or receives any communication, document, record or letter