

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1959 - 1960

MAINE STATE
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August 2, 1960

To: Roderic C. O'Connor, Manager of Industrial Building Authority

Re: Cost of Special Purpose Buildings

I have your request for an opinion regarding the inclusion of certain features in buildings which the Maine Industrial Building Authority will insure. You have requested a rule of thumb to guide you in determining the cost of the project when dealing with special purpose buildings.

Subsection III, Section 5, Chapter 38-B states:

““Industrial project” shall mean any building or other real estate improvement and, if a part thereof, the land upon which they may be located, and all real properties deemed necessary to their use by any industry for the manufacturing, processing or assembling of raw materials or manufactured products.”

As a general rule those parts of a building which are an integral part for the use and enjoyment thereof and which are annexed are considered real property. Insulation is a part of the real estate as opposed to freezers which may or may not be a part of the realty. Built in features such as waste disposal systems, water and storage tanks and pumps, and built in freezers would be a part of the realty.

In regard to fixtures, our court has enunciated the following rule: A chattel is not emerged in the realty unless (1) Physically annexed at least by juxtaposition, to the realty or some appurtenance thereof, (2) adapted to and usable with that part of the realty to which it is annexed, (3) so annexed with the intention, on the part of the person making the annexation, to make it a permanent accession to the realty.

It should be kept in mind that the rights of parties regarding realty and personalty can be governed by agreement.

In regard to railroad tracks, the general rule is where the superstructure of a railroad is placed upon the land of another under an easement, license, or lease, the railroad company cannot be said to have intended to attach the rails and other appliances to the land so as to make them a part thereof and they are therefore treated as trade fixtures. By agreement of parties, the railroad may become a fixture and part of the realty.

In general one must apply the test set forth herein and determine if there are any agreements between the parties. Machinery, even though affixed, should be treated as personalty.

GEORGE A. WATHEN

Assistant Attorney General

August 2, 1960

To: Roderic C. O'Connor, Manager of Industrial Building Authority

Re: Tenants acting as Guarantors — Mortgage Insurance Fund

You state that tenants have been required by the Authority to act as guarantor of mortgage payments and as security for the guarantee to