

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

person who broke the glass, the Council, in almost all circumstances, would be entitled to reimbursement by such person.

LEON V. WALKER, JR.

Assistant Attorney General

September 27, 1962

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

Re: Plowing and maintenance of road from Blaine Avenue to Airport Building

In order to answer the questions contained in your memo of 12 September, I have examined the records of the County Commissioners and the various deeds by which the State acquired title to the airport property.

The proposed use of the land does not appear in any of the deeds. In 1933 the municipal officers of Augusta petitioned to have so much of Winthrop Street as lies between the westerly line of Blaine Avenue and the westerly line of the Muster Field discontinued, to "permit development of the Muster Field as a commercial airport." On April 17, 1934, the County Commissioners ordered "that said road be discontinued as prayed for in said petition." Petitioners then appealed to the Superior Court with no reason given. In 1936 the appeal was dismissed by agreement.

In view of the above, the answer to your first question is that the Adjutant General does not have responsibility for snow plowing and maintenance of the above-described section of Winthrop Street. In view of this opinion, the second question does not require answer.

Since the State owned the land on both sides of the discontinued section of road, it previously owned the road subject to the public easement, and it is now obligated for snow removal and other necessary maintenance.

LEON V. WALKER, JR.

Assistant Attorney General

October 8, 1962

Paul L. Powers, Esq.

Attorney at Law

Freeport, Maine

Re: Harraseeket Yacht Club

Dear Mr. Powers:

Your letter of October 3, 1962, has been forwarded to me for answer.

In the second paragraph of your correspondence you mentioned that the "property owned by this corporation should be exempt from taxes under our statutes." I presume that the exemptions referred to are those found in Chapter 91-A, section 10.

You will note that Section 10, II, speaks of benevolent and charitable institutions. Benevolent associations are those which are philanthropic, humane, having a desire or purpose to do good to men, according to *Black's Law Dictionary*, 4th Edition. See also the definitions concerning benevolent associations and charitable corporations in the same volume.

Chapter 54 of the Revised Statutes lends no assistance concerning property tax exemption under 91-A.

I call your attention to *Oak Park Club v. Lindheimer*, 369 Ill. 462; 17 N.E. 2d 32, wherein the Court said:

“The certificate of incorporation which is the controlling evidence of the purpose for which the organization was created, and the other evidence introduced, discloses that the chief permanent, continuous activities of the club, when the taxes in question were extended, were social and recreational in their nature, and these do not constitute a charitable purpose.”

In *Oak Park Club*, the corporation sought real estate tax exemption claiming to be a charitable organization. The certificate of incorporation of the club stated that the purpose of the organization was “to promote social intercourse and the general improvement and welfare of its members and of the community.” The court said:

“Civic, educational and charitable activities were and are carried on within the club without any attempt to differentiate those strictly charitable. Assuming that the civic and educational activities are all of a charitable character they have not been shown to be the major functions of the club. The property of a club or other organization, to be exempt from taxation must be used primarily for charitable purposes.”

Note that C-1 of II, section 10, Chapter 91-A provides exemption for only those corporations organized and conducted *exclusively* for benevolent and charitable purposes.

I note that the purposes of the above mentioned corporation are “to encourage and promote the sport of boating and the science of seamanship and navigation * * *.”

Concerning the matter of profit I call your attention to the following language taken from *Oak Park Club*:

“* * * the assessor found the property to be exempt for the year 1936 because the business of the club was not conducted for profit. The fact that no profit is made is not of controlling importance.”

See also *Holbert et al. v. Springfield Motor Boat Club*, 342 Ill. App. 685; *Coyne Electrical School v. Paschen*, 12 Ill. 2d 387 and *Appeal of Art Club of Philadelphia*, 327 Pa. 106.

In conclusion, from a reading of the applicable statute and case law, it is my opinion that the purposes of the Harraseeket Yacht Club do not qualify it for exemption under Chapter 91-A of our Revised Statutes.

Although your letter is not intended as an application under Chapter 91-A, often the State Tax Assessor receives correspondence containing language similar to that of the letter referred to my attention. In these instances, I have instructed the State Tax Assessor that it is my opinion such application should be made with the tax assessors on the local level. Section 29 of Chapter 91-A speaks of tax assessors as municipal officers and calls for the filing of a report with the tax assessors.

I am retaining in my records the photostatic copies forwarded with your correspondence.

I hope that I have been of some assistance to you in this matter.
Thank you for your attention.

Yours very truly,

JOHN W. BENOIT
Assistant Attorney General

October 12, 1962

To: Roland M. Berry, State Budget Officer

Re: Use of Budget Estimates

You have asked for an opinion from this office as to the use of budget estimates submitted by department heads to the state budget officer under the provisions of Chapter 15-A. In particular you are concerned with whether your office must make such requests available to (1) the general public and (2) candidates for the general election.

Section 8 of Chapter 15-A, Revised Statutes of 1954, provides in part that:

“On or before September 1st of the even-numbered years, all departments and other agencies of the state government and corporations and associations receiving or desiring to receive state funds under the provisions of law shall prepare, in the manner prescribed by and on blanks furnished them by the state budget officer, and submit to said officer, estimates of their expenditure requirements for each fiscal year of the ensuing biennium contrasted with the corresponding figures of the last completed fiscal year and the estimated figures for the current fiscal year.”

Section 9 provides that the governor-elect or the governor and the state budget officer shall review the budget estimates altering, revising, increasing or decreasing the estimates. The governor or governor-elect shall then direct the state budget officer to prepare a state budget document. The governor shall transmit said budget document to the legislature not later than the close of the second week of the regular legislative session.

Section 5, Subsection I, provides that the bureau of budget shall have the duty and authority:

“To prepare and submit to the governor-elect, or the governor, biennially, a state budget document in accordance with the provisions set forth in this chapter;”

From a reading of these sections of the statutes it is clear that the legislative intent was that the budget estimates would be submitted to the state budget officer. He would then review them, requesting such further information from department heads and other agencies as he deems necessary. When he has his figures together, he then sits down with the governor-elect or governor, as the case may be, and they in turn review the estimates. They may change the figures in any way they feel necessary. When they have arrived at a satisfactory budget estimate, the budget officer then prepares a budget document and submits it to the governor-elect or governor. The governor transmits this document to the legislature within the appointed time.