

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

Answer:

No.

Reasons:

According to the records of the Secretary of State, the Milton Bible Church is not a Maine corporation. Neither does the organization qualify to take land pursuant to § 19, c. 57, R. S., there being no board of deacons. Though the Northeastern Gospel Crusade, Incorporated, may be considered capable of taking title by reason of its having a corporate existence, still the transfer of title to a member of that entity may not constitute a transfer to the entity itself.

Section 164-A, chapter 41, Revised Statutes, provides for the sale of school property in unorganized territory. The section is not restrictive relative to the type of sale, i. e., sale on sealed bids or private sale. The manner of securing purchasers is left to the commissioner's discretion. Because you indicate that more moneys may be realized from the sale by sealed bids, that manner of transaction has merit.

In conclusion, you express concern, generally, whether proposed grantees have the proper status to acquire title to real estate. Though that inquiry is of interest to you, still, the grantee is the person having the task of determining his capacity to take and hold real property.

JOHN W. BENOIT

Assistant Attorney General

February 25, 1963

To: Honorable Clarence V. Harrington
House of Representatives
Augusta, Maine

Dear Mr. Harrington:

Re: Legislative Document 1373, An Act Relating to the Application of the Christmas Tree Law to Knox, Lincoln and Waldo Counties.

You have asked this office about the constitutionality of Legislative Document 1373, An Act Relating to the Application of the Christmas Tree Law to Knox, Lincoln and Waldo Counties. The proposed legislation seeks to exempt Knox, Lincoln and Waldo Counties from the operation of sections 67-A, 67-C, subsection II 67-E, 67-F and 67-I of Chapter 36.

Sections 67-A to 67-J were enacted by Public Laws 1959, Chapter 283. Some of the sections were amended in 1961. Section 67-A prohibits the transportation for commercial purposes Christmas trees or evergreen boughs without registering with the state forestry department. Fee is \$1.00. Section 67-C, subsection II, calls for a person transporting trees or boughs to have landowner's permit and registration on person or in the truck. Section 67-E gives the forest commissioner right to suspend or revoke registration upon certain conditions. Section 67-F allows qualified officers to make inspection and seize and hold trees or boughs until proof of landowner's

permit or registration is produced. Section 67-I lists officers authorized to enforce the law.

From the above it can readily be seen that Legislative Document 1373 seeks to exempt persons in three named counties from the provisions of the law. One provision of the law would be applicable in those three counties but could not be enforced under the law. The enforcement of that provision would have to be by other methods than prescribed in the so-called Christmas tree law.

In order for a law exercising the police power of the State to be constitutional, it must be reasonable. It cannot be arbitrary or capricious. In setting up a class to be covered by its provisions it must select a natural class; one that can be readily ascertained. Once the class is established, all who are in that class must be covered. The law cannot select some and say "You come within the law" but select others and say "You do not come within the law." The law as enacted in 1959 and amended in 1961 selected all persons who cut and transport Christmas trees and evergreen boughs for commercial purposes. The proposed legislation seeks to exempt some persons.

As early as 1825 in *Lewis v. Webb*, 3 Me. 326, our court held that the legislature cannot dispense with a general law for particular cases. In *Milton v. Railroad Co.*, 103 Me. 218, it held that the legislature has no power to exempt any particular person or corporation from the operation of the general law, statutory or common. In the case of *In Re Milo Water Co.*, 128 Me. 531, the court quotes favorably from *State v. Mitchell*, 97 Me. 66; *Holden v. James*, 11 Mass. 396; *Pierce v. Kimball*, 9 Me. 59, and gives the following quote from the United States Supreme Court in the case of *Cotting v. Kansas City Stockyards*, 183 U. S. 79:

"Recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed and that such equal protection is denied when, two parties being engaged in the same kind of business and under the same conditions, burdens are cast upon the one that are not cast upon the other."

Another case very much in point is from North Carolina. In 1937 the legislature passed a general law requiring all dry cleaning establishments to be licensed. In 1939 an amendment exempted some 14 counties from the general law. In the case of *State v. Harris*, 6 S. E. 2d 854, the court said:

". . . any law which, purporting to operate on a particular class, places upon those engaged in the business in a portion of the state a burden for the privilege which is exercised freely and without additional charge by those engaged in the business in other parts of the State, is arbitrary in classification because it discriminates *within* the class originally selected and extends to the latter a privilege and immunity not accorded to those who must under the law, pay the additional exaction or quit the business."

From the foregoing it is the opinion of this office that Legislative Document 1373 is unconstitutional.

Very truly yours,

GEORGE C. WEST

Deputy Attorney General