

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

# STATE OF MAINE

Inter-Departmental Memorandum Date January 31, 1964

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation  
From Jon R. Doyle, Asst. Atty. General Dept. " " "  
Subject Southern Mill and Manufacturing Co. Reg. No. 51429  
and Ricker Classical Institute and Ricker College

Ricker Classical Institute and Ricker College, hereafter referred to as Ricker, desired to have constructed upon its premises a dormitory building and further to lease the building.

An arrangement was entered into whereby Southern Mill and Manufacturing Co., hereafter referred to as Southern, would build the dormitory and upon completion would sell it to C.I.T. Educational Buildings; C.I.T. would then lease the building to Ricker.

An agreement was entered into between Ricker and Southern, which agreement is entitled "Building Agreement" and "Lease."

Reduced to simple terms, the agreement provides that Southern will build and lease to Ricker a dormitory building. The lease is to run for a certain period of time with periodic payments being made thereunder. Upon all payments being made, the Lessor will surrender title to the dormitory to Ricker.

Paragraph eleven of the agreement recites that title to the dormitory shall be vested in Southern at all times during the term of the lease.

The Bureau of Taxation has picked up on audit as taxable materials going into the building on the theory that the building was not constructed for and sold to Ricker who is exempt from tax on sale of tangible personal property by virtue of Chapter 17, section 10, XVI.

The college contends that the sale was a security transaction and in the nature of a conditional sale and therefore, since the sale was in reality to the college, an exempt entity under the Sales and Use Tax Law, there is no tax.

## QUESTION:

Whether under the "Building Agreement and Lease" the materials are taxable, i.e., does Ricker's exemption apply?

Ernest H. Johnson, State Tax Assessor

January 31, 1964

ANSWER:

The materials are properly taxable; Ricker's exemption does not apply.

REASONS:

The Law:

"No tax on sales, storage or use shall be collected upon or in connection with:  
Sales to . . . schools . . . . 'Schools' mean incorporated non-stock educational institutions, including institutions empowered to confer educational, literary or academic degrees, which have a regular faculty, curriculum and organized body of pupils in attendance throughout the usual school year, which keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual."  
R.S. 1954, Ch. 17, sec. 10, XVI.

Authorities need not be cited to indicate that tax exemptions are strictly construed.

With this caveat in mind we must proceed to an analysis of the transaction.

It is true that a conditional sales contract is within the definition of "sale" as defined by the Sales and Use Tax Law. However, if this sale is a conditional sale is it the type contemplated by the statute?

Distinctions must be made:

a. The agreement is one for the sale of realty--conditional sale does not apply to realty either generally or in the field of tax law.

b. The tax is on materials incorporated in the building; Ricker is purchasing not personalty but realty.

The Sales and Use Tax Law is concerned only with the sale and taxation of tangible personal property. The transaction in question

Ernest H. Johnson, State Tax Assessor

January 31, 1964

involves the sale of a building or the lease thereof. A building is considered real property with certain exceptions, none of which appear here. Parties may by their acts or conduct indicate that a certain structure is to remain personalty even though affixed to realty. No where, in the instrument presented us for review, does this intention appear. Rather, the parties seem to intend that the building remain realty.

The instrument interpreted when applied to tangible personal property might be construed as a conditional sale contract. However, it does not. It purports to lease or rent real property. The document does not purport to be one for the conditional sale of materials but rather speaks of a completed structure.

It is alleged on behalf of the college that if a tax is levied upon the materials by the Bureau of Taxation that the college will have to absorb the tax at any rate since it is liable in the agreement therefor. The answer to this is simply that the college has contracted away its right to take advantage of the tax exemption. Certainly it should not now be heard to complain that it will have to pay the tax.

While it is true that if a college complies with its covenants that it will be the ultimate buyer, by no stretch of the imagination can it bring the transaction within the exemption afforded by Chapter 17, section 10, subsection 16. If the materials had been sold to the college on a conditional sales contract, section 10, subsection 16, would apply; if an item of tangible personal property had been sold to the college using language similar to the lease agreement subsection 16 would then again apply. It is important, however, that no pretense here was made of selling tangible personal property, rather, the parties were concerned with the purchase and sale of a building. The transaction might more aptly be termed analagous to a bond for a deed than for a conditional sale. Since the builder of the building, who had title at all times, purchased and used the materials in constructing the realty it is proper that the tax be paid by it.

The instrument indicates that the personal property was sold directly to the contractor and used by him. There was no tangible personal property sold to the college.

We therefore do not see how the exemption afforded by the Sales and Use Tax Law can be applied other than by a distortion of the intent of the Legislature.

Ernest H. Johnson, State Tax Assessor

January 31, 1964

We note also that there is no evidence that the contractor was operating as anything other than an independent contractor buying materials in his own name. In fact, the instrument provides that the contractor will provide and pay for all materials, etc. necessary for the completion of construction. The sale therefore was one to the contractor and not to the college and is taxable.

JRD:epd