

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)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

"The plea of nolo contendere is an implied confession of the offense charged, the judgment of conviction follows that plea as well as the plea of guilty. And it was not necessary that the court should adjudge that the party was guilty, for that follows by necessary legal inference from the implied confession. *Commonwealth v. Horton*, 9 Pick. 206. A plea of nolo contendere, when accepted by the court, is, in its effect upon the case, equivalent to a plea of guilty. . . . If the plea is accepted it is not necessary or proper that the court should adjudge the party to be guilty, for that follows as a legal inference from the implied confession." *Commonwealth v. Ingersoll*, 145 Mass. 381.

The fact that the judge took some action following the plea is clear indication that he accepted the plea. It was not necessary that he make a formal finding of "guilty" or that he assess a large fine or a jail sentence.

The offering of the plea and its acceptance by the judge constituted a conviction. Hence the action of Secretary of State's office was proper.

It is very obvious that a plea of "guilty" will produce the same results.

GEORGE C. WEST

Deputy Attorney General

February 24, 1964

To: Frank T. Kelly, Executive Secretary, Board of Hairdressers

Re: Notice of Examination for Instructor of Hairdressing

Facts:

An applicant for an examination as an instructor was given an examination without the 10-day notice as stated in chapter 25, section 224. Apparently two members of the board were in agreement about giving the examination. The third member was not in accord.

Question:

Must an applicant for any instructor's examination be given the 10-day notice stated in chapter 25, section 224?

Answer:

No.

Opinion:

The purpose of a notice of the holding of an examination is to apprise all persons interested of the time and place of holding such examination. It is in the law to prevent the board from holding surprise examinations and preventing some applicants from participating because of no knowledge of the holding of an examination.

However, chapter 25, section 224 applies only to examinations of applicants for registration as hairdressers. It does not apply to examinations for instructors' certificates of registration.

Section 222 in the 4th paragraph provides in the first sentence:

"The board shall make rules and regulations for the examination of applicants for certificates of registration as instructors of hairdressing and beauty culture."

The legislature, knowing that applicants for registration as instructors would not be as numerous as applicants for registration as hairdressers, has left the matter of examinations up to the rule-making power of the board. The board may make reasonable rules.

Specifically as to notice, the board is only required to be sure that the applicants have sufficient notice of the examination to allow them to be ready and present. The board cannot raise the question as to validity of a notice. Only an applicant can do that.

GEORGE C. WEST

Deputy Attorney General

February 25, 1964

To: Ernest H. Johnson, State Tax Assessor

Re: Sales Tax Exemption to Out-of-State Educational Institutions and to Municipalities Outside Maine

Your memorandum of February 10, 1964 poses two questions.

Question No. 1:

You ask whether subsection II of section 10 of Chapter 17 exempting "Sales to the State or any political subdivision . . ." exempts only sales to the State of Maine or political subdivision of the State of Maine and whether sales to other states or municipalities are excluded.

Answer:

The answer is yes.

Reasons:

The words "in this State" or "in the State" which are similar in import to the words "the State" are defined in section 2 of the Sales and Use Tax Law to refer specifically to the State of Maine.

It is significant that the legislature used the words "the State" in making specific reference to the entity entitled to the exemption. This phrase indicates an intent to exempt a particular state. Had the legislature intended otherwise it doubtless would have used the word "states" or other similar words to refer to other than a particular state.

The provision indicates an intent to exempt sales to the State of Maine or political subdivisions thereof.

Support for this result is found in Regulation No. 2 of the Maine Sales and Use Tax Law which provides:

"Sales made directly to the Federal Government, *this State or any political subdivision of this State*, or to any agency of the above, are exempt from sales tax. In addition to the Federal Government, the State of Maine, and any county, city, town or plantation in the State of Maine, this exemption covers sales to . . ."
(Emphasis supplied).

I conclude therefore that the exemption only applies to the State of Maine or to political subdivisions of the State of Maine.

Question No. 2:

You also ask whether subsection XVI of section 10 of Chapter 17 which exempts sales to certain educational institutions, is restricted to institutions existing or incorporated in Maine.