

# 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**

This section is a portion of the Robinson-Patman Anti-Discrimination Act, which Act was an amendment to the Clayton Act. 15 U.S.C.A. § 13 (c) is section 2 (c) of the Robinson-Patman Act. The following is an explanation of this section in a publication of the Joint Committee on the Continuing Legal Education of the American Law Institute and the American Bar Association.

“Section 2 (c) is commonly known as the ‘brokerage section.’

It prohibits the payment by a seller of any compensation in the nature of a brokerage or commission for or on the sale of goods, or any allowance or discount in lieu thereof, to the buyer or to a buying agent, broker or other intermediary acting for the buyer or subject to his control. The buyer is also prohibited from receiving such commissions or discounts.” *Price Discrimination and Problems under the Robinson-Patman Act*, 2d Revised Edition, June, 1959, at pages 2 and 3.

It is clear that this section relates to transactions between sellers of goods and buyers, their agents, broker or other intermediary acting for the buyer or subject to his control. This section cannot be applicable to the given fact situation because a licensed Maine insurance agency having performed no personal services and having received a portion of the commission is neither the buyer, the buyer’s agent, a broker or other intermediary acting for the buyer or subject to his control.

We are satisfied that there is no federal or state regulation preventing the practice of dividing commissions on a package policy among licensed agencies even though one or more agency will have performed no service.

JEROME S. MATUS

Assistant Attorney General

November 17, 1964

To: Ernest H. Johnson, State Tax Assessor

Re: Taxation of Bean Property in A 2 Grafton, Oxford County

Facts:

State of Maine, grantee, purchased a certain lot or parcel of land in an unorganized township from Ervin Bean, grantor, on which there is a building. The grantor reserved the building on the premises which was to remain the grantor’s personal property and reserved to the grantor and his spouse, a so-called life interest in the premises. There is also included in the deed five restrictions which are as follows:

1. No additional building, nor additions to the existing building, are to be erected without written permission of the State of Maine, its successors or assigns, acting through the State Park and Recreation Commission.
2. The premises are not to be used for commercial purposes but only for residential purposes. Renting the building for residential use is deemed to be a commercial purpose.

Violation of this restriction shall immediately forfeit the right of the grantor and surviving spouse to occupy said premises.

3. The building is to be kept in a reasonable state of repair and appearance. The State Park and Recreation Commission shall notify the building owner or surviving spouse, in writing, of any condition requiring repair; and if the owner or surviving spouse have not made such repairs within 90 days thereafter, or come to an agreement with the Commission as to a definite date when such repairs will be made, the Commission may remove or demolish such building.
4. The building is to be occupied during some portion of each year, and if not so occupied by the owner or surviving spouse for two (2) consecutive calendar years, the Commission may remove or demolish same, and the grantor shall not again occupy said premises.
5. The grantor and surviving spouse shall not sell any building on said premises except upon condition that it be removed from the premises within 90 days after such sale, or within such date as may be agreed to by the Commission; the Commission may demolish and remove same, and if the building so demolished or removed is the dwelling, the grantor and surviving spouse shall not again occupy said premises.

It is a condition of this grant that the premises shall not be used by the grantee, its successors or assigns, for camp sites or picnic grounds for so long as the grantor is entitled to occupy same, except by consent of grantor.

Question No. 1:

Whether or not the interest in this property retained by the grantor is subject to property taxation?

Answer:

Yes.

Reasons:

The pertinent law in question here is section 4 of Chapter 91-A, Revised Statutes, which states in part as follows:

“Real estate, for the purpose of taxation, shall include all lands in the state, all buildings, . . . ; *interest and improvements in land, the fee of which is in the state . . .*” (Emphasis supplied).

In looking at the conveyance in question here we find the following paragraph says:

“Excepting and reserving the building on said premises which is to remain the personal property of the grantor; and reserving to the grantor . . . , the right to occupy said land and building for the remainder of their natural lives . . . .”

It can be seen from the preceding, and the deed in general, that the grantor conveyed a fee simple to the grantee reserving in the grantor an “interest in the land, the fee of which is in the state.”

This therefore satisfies the requirement of property taxable as real estate under Chapter 91-A, section 4 of the Revised Statutes.

Question No. 2:

Whether or not this interest in property being taxable should be taxed as real estate, or as real estate insofar as it relates to the land, and personal property insofar as it relates to the building, or as personal property?

Answer:

Real estate is taxable as real estate. Building is taxable as personal property.

Reasons:

Since the grantor here retains a life estate subject to a special limitation this would be considered to be an interest in land of which the fee is in the state and therefore would, for the purpose of taxation, be taxable as real estate under Chapter 91-A, section 4 of the Revised Statutes.

The pertinent section of the statute dealing with the taxability of buildings in the State of Maine is as follows:

“ . . . Buildings and house trailers on leased land or on land not owned by the owner of the buildings when situated in any municipality, shall be considered real estate for purposes of taxation, and shall be taxed in the municipality where said land is located; *but when such buildings and house trailers are located in the unorganized territory they shall be assessed and taxed as personal property in the place where located.* (Emphasis supplied).

It can be readily seen from the foregoing section that since the building in question here is located in an unorganized territory, for purposes of taxation it should be taxed as personal property.

RICHARD S. COHEN

Assistant Attorney General

November 25, 1964

To: Col. Robert Marx, Chief, Maine State Police

Re: Granting of weight tolerance

Facts:

On the ground that measuring devices are not 100% accurate, it has been requested that you grant a tolerance above the maximum gross weight of 73,280 pounds for trucks.

Question:

May a tolerance above the maximum gross weight of 73,280 pounds provided for in R. S., c. 22, § 109, be granted by the Maine State Police?

Answer:

No.

Opinion:

R. S., c. 22 § 109, provides for a maximum gross weight of 73,280 pounds. R. S., c. 22, § 111, provides for fines dependent upon the amount of the excess over the gross weight limit, and further provides:

“For the purposes of this chapter, weights as indicated by any type of stationary or portable scales approved by the Maine State Highway Commission and tested within 12 calendar months prior to the time of use by a person and method approved by said commission shall be deemed accurate.”

**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 ~~November 3, 1964~~

To ~~Richard S. Cohen, Assistant Attorney General~~ Dept. ~~Bureau of Taxation~~  
From ~~Ernest H. Johnson, State Tax Assessor~~ Dept. ~~Bureau of Taxation~~  
Subject ~~Taxation of Bean property in A 2 Grafton, Oxford County~~

---

---

This inquiry has to do with the taxation of property located in an unorganized township. Please note the attached memorandum from Mr. Birkenwald, dated November 2, as well as the copy of the deed from Ervin Bean to the State of Maine.

Will you please advise whether the interest in this property retained by the grantor is subject to property taxation; and if so, whether this interest should be taxed as real estate, or as real estate insofar as it relates to the land, and personal property insofar as it relates to the building, or as personal property.

While the administrative features of the taxation of property in the unorganized territory are for the most part found in Chapter 16 of the Revised Statutes, the substantive portions of the law are found in Chapter 91-A. Section 4 of Chapter 91-A contains the definition of real estate for the purposes of taxation.

EHJ:j