

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

tricity coupled with a minimum charge, whether a line extension charge or not, we should consider the total charge as taxable.

JON R. DOYLE

Assistant Attorney General

December 29, 1964

To: Walter B. Steele, Jr., Executive Secretary

Re: Agency of State; University of Maine

Facts:

Recently, the University of Maine advertised for bids concerning their purchase of milk to be utilized at the facility. The price proposals could conceivably be for amounts less than the minimum prices established for the Bangor Marketing Area, which includes Orono.

Section 1 of the Maine Milk Commission Law defines "person" as follows:

"'Person' means any individual, partnership, firm, corporation, association or other unit, and the State and all political subdivisions or agencies thereof, except State owned and operated institutions."

R. S., c. 33, § 1.

It is unlawful for any person to engage in any practice which is destructive of scheduled minimum prices.

"It shall be unlawful for any person to engage in any practice destructive of the scheduled minimum prices for milk established under the provisions of this Chapter for any market, including but not limited to any discount, rebate, gratuity, advertising allowance or combination price for milk with any other commodity. . . ."

R. S., c. 33, § 4.

Presently, the University is an agency of the State for the purposes for which it was established.

"Sec. 131. State agency. The University of Maine is declared to be an instrumentality and agency of the state for the purpose for which it was established for which it has been managed and maintained under the provisions of chapter 532 of the private and special laws of 1865 and supplementary legislation relating thereto."

R. S., c. 41.

Question:

1. Whether, under the given facts, the words "agency of the State" and "State-owned and operated institutions" are synonymous?

2. If not, whether the minimum prices established by the Commission apply to the sale of milk purchased by the University?

Answer:

1. No.

2. Yes.

Reason:

The reference language (*R. S., c. 33, § 1*) provides that the word "person" shall mean, inter alia, the State, its political subdivisions, and its agencies; but does not include institutions which are owned and operated by the State. The Legislature has decreed that the State University is an

agency of the State "for the purpose for which it was established and for which it has been managed." *R. S., c. 41, § 131*. In a legal opinion rendered on March 23, 1946, by this Office, the following statement was given regarding the status of the University, in view of the existence of *R. S., c. 41, § 131*.

"Confirming what I stated in a former opinion, the University of Maine is chartered by the State and fostered by the State, yet it is not a branch of the State's educational system, nor an agency, nor an instrumentality of the State only for the purposes for which it was established and for which it has been managed and maintained under the provisions of its charter and, as you know, the University of Maine has a legal entity wholly separate and apart from the State. . . ."

In the case of *Orono v. Sigma Alpha Epsilon Society*, 105 Me. 214 (1909) the Court determined that a fraternity was liable for a real estate tax levied by the Town of Orono. The Court held that the Society was not immune from taxation by reason of its relationship to the University; that neither the Society nor the University was an agency or instrumentality of the State. (Thereafter the language appearing in section 131 of c. 41, R. S., came into existence.)

In answering this opinion, it is not enough to determine whether the University is an agency of the State; but it is necessary to determine the further question: Whether the University (or agency) is a state-owned and operated institution? The words "State agency" and "State-owned and operated institution" are not synonymous. According to the decision in *Orono v. Sigma Alpha Epsilon Society*, *supra*, the University was not a state-owned and operated institution; and the enactment of R. S., c. 41, § 131 does not change that holding.

JOHN W. BENOIT

Assistant Attorney General