STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

no way tends to mislead the voters; and in no way affected the results of the vote. Lastly, we are not at all satisfied that the district possessed an option regarding the method of voting upon the articles authorizing the issuance of bonds or notes. In *Frank E. Hancock, Attorney General, ex rels., George L. Atkins et als. v. Robert S. Fuller, Selectman et als,* (a case heard by Chief Justice Robert B. Williamson in early 1960, in Kennebec County Superior Court) it was decided by the Chief Justice (in his written findings and conclusions) that: "The questions in the instant case are ordered by the Legislature acting through the commission to be submitted to the voters of Farmingdale. Farmingdale is a 'secret ballot' town and it follows therefore that in my opinion the questions must be voted upon by secret ballot." The decree was dated March 9, 1960. The questions voted upon in the instant matter were of the same tenor as those which were before the court in the case cited immediately above. *20 M.R.S.A. § 215, 4; 20 M.R.S.A. § 225, 3, A.* In closing, we cite the entire decision in *Lewis v. City of Port Angeles,* (Wash.), 34 P. 914, 915:

> "Stiles, J. The only objection made to the issuance of the proposed bonds being that the ordinance adopting the system of electric lighting for the respondent city recited that it was passed in pursuance of the act of March 26, 1890, as amended by the act of March 9, 1891, when in fact, if passed at all, it must have been passed in pursuance of the act of February 10, 1893, the judgment is affirmed. *The recital in the ordinance was surplusage,* and the act of 1893 was, under the decision in Seymour v. City of Tacoma, 33 Pac. 1059, (decided June 2, 1893,) *a mere re-enactment of the former acts,* with an immaterial amendment covering the purchase of the existing light or water plants." (Emphasis ours.)

Thus, if the notes are executed and if the School Administrative District expends the moneys for a capital outlay purpose, such expenditure would not be rendered invalid by the given facts; and State aid should be paid pursuant to *20 M.R.S.A. § 3518.*

JOHN W. BENOIT
Assistant Attorney General

August 4, 1965
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Taxation of Roadside Advertising Signs

FACTS:

In your memorandum relating to the above, the question is raised as to whether or not roadside advertising signs located on private property are taxable as personal property, or as real estate.

ANSWER:

Roadside advertising signs, on standards, posts, or other support of that nature attached upon land, would be taxable as real estate.

LAW:

"Real estate, for the purposes of taxation, shall include all lands in the State and all buildings, house trailers and *other things affixed to the same* . . . ." 36 M.R.S.A. § 551. (Emphasis supplied).

REASONS:

In making the above determination as to whether roadside advertising signs are taxable as real estate or personal property, we must deal with two distinct areas. Firstly it must be determined what "other things affixed to the same." in the above statute should be construed as, in light of appearing within the general taxation statute, and whether or not the rule put forth in the above statute can be altered by intent of the parties.

Where the tax statute itself sets out standards to determine whether or not property annexed to realty is taxable as realty, as seen in the above statute, those standards, rather than intent of the parties, govern the situation. It has been held widely that this rule is not affected by private agreements of the parties. Therefore, *things affixed to the land* will be taxed as real estate and not as personal property, without considering the intent of the parties.

We must now ask ourselves just what is encompassed in the portion of the above statute "things affixed to the same." As seen above, where the tax statute itself sets out a standard, intent of the parties is of no effect whatsoever. As found in Webster's New International Dictionary, "affix" is to fix or fasten in any way; to attach physically; to fix upon; to settle upon; to attach with or to connect with.

In the work sheets prepared in connection with the redraft of Chapter 92 of the Revised Statutes, 1954, now 36 M.R.S.A. it can be readily seen that the words "and other things" which were dropped from the particular statute in the revision of 1883 would be restored, so that real estate would clearly include *anything* affixed to land, therefore, "affixed to the same" in the statute refers to physical connection without considering intent of the parties.

Since the advertising signs in question are on standards, posts, or some other support of that nature that are affixed in some manner to the land, they would necessarily have to be taxed as real property and not as personalty.

CONCLUSION:

Lastly, in considering to which persons the advertising signs in question should be taxed to, we find in *Peaks v. Hutchinson,* 96 Me. 530, that the Maine Court has held that buildings constitute a property right distinct from that of the landowner. By analogy it can be said without hesitation that signs on standards, physically attached to the land would be considered in the same manner as buildings and would necessarily constitute a separate and distinct property right from the owner of the land. As property these signs are taxable separately as stated above. It is within legislative authority, for the purpose of taxation, to provide that real estate shall be assessed as personalty or that personalty shall be taxed as realty. This is the situation in the instant case. 36 M.R.S.A. § 551 makes such signs taxable as real estate wherein it provides that "Real estate, for the purposes of taxation, shall include all lands . . . and other things affixed to the same...." This did not, however, change the interest of the sign owner in any other respect. The sign is still a property right and must be taxed to the owner in the absence of legislative

enactment otherwise. There is nothing in such language to indicate any intention upon the part of the Legislature to affect the nature of owners of property or an interest in property affixed to land other than to make certain that, for the purposes of taxation, it be considered real estate.

RICHARD S. COHEN
Assistant Attorney General

August 26, 1965
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Sales and Use Tax Status of National Banks

FACTS:

National banks have recently been permitted to engage in the business of leasing tangible personal property. This office has previously ruled that national banks are exempt from both sales and use tax.

QUESTION:

Whether the previous opinions regarding the status of national banks under the sales and use tax law are correct, particularly with respect to the liability of such banks for tax on purchases by them.

ANSWER:

Yes.

LAW:

The sales tax law exempts by Subsection 1 of Section 1760: "Sales which this State is prohibited from taxing under the constitution or laws of the United States or under the constitution of this State."

Subsection 2 exempts: "Sales to the State or any political subdivision, or to the Federal Government, *or to any agency of either of them.*" (Emphasis supplied).

REASONS:

Specifically, this office has previously ruled as follows regarding the status of national banks under the sales and use tax law:

1. *Sales to* national banks are exempt. (Opinions of May 4, 1953 and October 4, 1961).
2. *Sales by* national banks are exempt. (Opinion of October 4, 1961).
3. Use tax may be imposed upon the purchaser of tangible personal property sold by a national bank in the ordinary course of business. (Opinion of October 10, 1961).

STATE OF MAINE

Inter-Departmental Memorandum

Date June 1, 1965

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 roadside advertising signs

Mr. Birkenwald has raised the question whether roadside advertising signs on private property are taxable as personal property, or as real estate.

Section 551 of Title 36 defines real estate, for the purpose of taxation, to include "all lands in the state and all buildings, house trailers and other things affixed to the same. . . ." It goes on to provide that buildings and house trailers on leased land shall be considered real estate for the purpose of taxation in municipalities, but personal property for the purpose of taxation in unorganized areas.

While Mr. Birkenwald does not so specify, I assume his inquiry has to do with signs on standards, poles, or some other support of that nature. It seems to me the question is, whether the words "affixed to the same" in the statute refer to physical connection without considering the intent of the parties. If so, it would appear that these signs should be considered real estate for the purposes of taxation, regardless of whether they are located on land owned by the owner of the sign or not.

On the other hand, if intent of the parties has anything to do with the interpretation of the words in question, it would seem to me that in most cases of signs owned by persons other than the owner of the land, there is no intent to have the signs become "affixed" so as to be a part of the land, and thus they should not be considered real estate for purposes of taxation.

Will you please advise?

EHJ:J