

# 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

OK RJD

Inter-Departmental Memorandum Date December 15, 1965

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation  
From Richard S. Cohen, Asst. Attorney General Dept. " " "  
Subject Kennebunk Beach Improvement Association

In your memorandum relating to the above subject matter regarding property tax exemption of Kennebunk Beach Improvement Association you ask the following questions:

1. Do the records submitted to the State Tax Assessor indicate two separate and distinct organizations?
2. Assuming that there are in fact two organizations, are either or both of said organizations entitled to property tax exemptions?
3. If either organization is entitled to property tax exemption, is property held by trustees in the manner indicated by the deeds, subject to exemption if used for the "association's" own purposes?
4. On the basis of the discussion held on November 3, 1965, re above subject, is said real property used for the purposes stated in the charter, by-laws and amendments so submitted?

LAW

The applicable statute in this matter is 36 M.R.S.A. §632 (1) (A) (B) (C).

"1. Property of institutions and organizations.

- A. The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this state, and none of these shall be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation in the classes of persons for whose benefit such funds are applied.  
(Emphasis supplied).

1. No such institution shall be entitled to tax exemption if it is in fact conducted or operated principally for the benefit of persons who are not residents of Maine and if stipends or charges for its services, benefits or advantages in excess of an equivalent of \$15 per week are made or taken . . . ."
- B. The real estate and personal property owned and occupied or used solely for their own purposes by literary and scientific institutions.
- C. Further conditions to this right of exemption under paragraphs A and B of this subsection are that:
  1. Any corporation claiming exemption under paragraph A of this subsection shall be organized and conducted exclusively for benevolent and charitable purposes;
  2. No director, trustee, officer or employee of any organization claiming exemption shall receive directly or indirectly any pecuniary profit from the operation thereof, excepting reasonable compensation for services in effecting its purposes or as a proper beneficiary of its strictly benevolent or charitable purposes; and that
  3. All profits derived from the operation thereof and the proceeds from the sale of its property are devoted exclusively to the purposes for which it is organized; and that
  4. The institution, organization or corporation claiming exemption under provisions of this subsection shall file with the tax assessors upon their request a report for its preceding fiscal year in such detail as the tax assessors may reasonably require.

Ernest H. Johnson, State Tax Assessor

December 15, 1963

QUESTION #1

Do the records submitted to the State Tax Assessor indicate two separate organizations?

ANSWER

Yes; it is quite evident from the material and documents submitted that there exists two distinct organizations; Kennebunk Beach Improvement Association, a corporation located at Kennebunk Beach and organized and existing under the Maine law relating to corporations without capital stock; and Kennebunk Beach Improvement Association, a voluntary nonprofit association of individuals, also having its location at Kennebunk Beach, Maine. This conclusion is inescapable for the following reasons: the certificate of incorporation of November 9, 1910, creates a corporation known as Kennebunk Beach Improvement Association, according to the Maine corporation laws and the by-laws of November 14, 1910 seem also to be applicable to said corporation. We then have a document titled Amended Constitution and By-Laws which refers specifically to an "association" of the same name and not a "corporation." Along with the so-called "amended Constitution and By-Laws" we have three conveyances of realty dated May 26, July 17 and August 24, 1961, respectively, wherein the grantees are stated to be certain individuals in their capacities as trustees who take title to such property "on behalf of the members of Kennebunk Beach Improvement Association, a voluntary nonprofit association of individuals."

QUESTION #2

Are either or both of said organizations listed in the previous question entitled to property tax exemption under Maine law?

ANSWER

No, from the documents and facts submitted, it must be found that neither the corporation or, in the alternative, the voluntary nonprofit association, are entitled to property tax exemption under the existing statutes.

In dealing with tax exemptions, we are strictly governed by statutory authority. Exemptions in favor of private persons depend upon an express grant by constitutional provision or legislative enactment, and when granted, are to be strictly construed against the person who is asserting the claim of exemption.

Ernest M. Johnson, State Tax Assessor

December 15, 1965

"He who asserts that his property is immune from a tax sought to be imposed thereon has the affirmative of the issue, and he must show the precise extent of his exemption and his right thereto by clear proof. He must point out an . . . express statutory provision granting exemption from taxation, and show clearly that the property comes within the contemplation thereof

51 Am. Jur. 8527.

In other words, the situation here exists wherein Kennebunk Beach Improvement Association, the corporation, has the burden of proof to establish its right to a particular exemption under the statute. This they have failed to do. The only two areas wherein Kennebunk Beach Improvement Association would be entitled to a tax exemption would be if such organization was either (1) charitable or (2) literary and scientific, as required under the above statute. From the facts submitted, the exemption for literary and scientific institutions can be disposed of since Kennebunk Beach Improvement Association is engaged primarily if not solely in recreational activities, which would not satisfy the requirements of a literary and scientific institution. We find ourselves left with the exemption applicable to benevolent and charitable institutions. As can be seen from the statute (supra), the determination of an exemption from taxation of a charitable institution depends upon three fundamental considerations: (1) whether the institution claiming the exemption is incorporated by this State; (2) whether the institution owns the property involved; and (3) whether the institution occupies or uses the property for its own charitable purposes according to its charter and by-laws.

Taking these considerations and first applying them to Kennebunk Beach Improvement Association, the corporation organized on November 9, 1910, it appears without doubt that even though it is a Maine corporation, it does not own the proposed tax exempt property and therefore is not entitled to the exemption for that reason.

In applying the above considerations to Kennebunk Beach Improvement Association, the voluntary nonprofit association, shown to exist by virtue of the amended by-laws and constitution and deed transfers, before mentioned, it is readily evident that this organization is not entitled to the exemption by the fact of said organization owning the real property in question since said organization is not incorporated under Maine law as contemplated by the tax exemption statute (supra), and therefore fails in this particular.



**Ernest H. Johnson, State Tax Assessor**      **December 15, 1965**

**QUESTION #3**

**If either organization is entitled to the tax exemption, is property held by the trustees in the manner indicated by the deeds subject to exemption if used for the "association's" own purposes?**

**ANSWER**

**Because of the answer to question #2, the answer to this question becomes a moot point.**

**QUESTION #4:**

**On the basis of the discussion with representatives of the association on November 3, is the property being used for the association's own purposes?**

**ANSWER**

**It would seem from the material and facts presented that the real property in question held by the trustees, in the matter before indicated, is being used for the purposes set out in the document entitled Kennabunk Beach Improvement Association, Constitution and By-Laws, Amended, etc. This fact, however, would be of no consequence, in the instant situation because of the fact of the amended constitution and by-laws and the deed transfers being specifically applicable to the voluntary nonprofit association and not the corporation organized on November 9, 1910.**

**CONCLUSION**

**It can be seen from the foregoing that it is not possible from the facts and documents submitted in this matter to reach a conclusion whereby either of the two mentioned organizations could be brought to come within the purview of tax exemption provisions. Mainly because of the confusing situation brought about by the existence of two organizations, left totally unexplained by the taxpayer, neither organization is entitled to receive a tax exemption. Although the purposes set out in the by-laws and the way these purposes seemed to have been administered could in a normal situation result in a tax exemption for a domestic charitable corporation, they do not here. The burden of establishing tax exemption is upon the taxpayer.**

Ernest H. Johnson, State Tax Assessor

December 15, 1963

"Exemption is a special favor conferred.  
The party claiming it must bring his case  
unmistakably within the spirit and intent  
of the act creating the exemption."  
Bangor v. Masonic Lodge, 73 Me. 428.

ESC:epd



# STATE OF MAINE

Inter-Departmental Memorandum Date November 12, 1965

To Richard Cohen, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject Kennebunk Beach Improvement Association

Attached is a letter from Homer Waterhouse, Esq., dated November 8, together with copies of the by-laws of the Kennebunk Beach Improvement Association, amendments to the by-laws of the Kennebunk Beach Improvement Association, and copies of three deeds to the Kennebunk Beach Improvement Association. Also attached is a copy of the charter of the Kennebunk Beach Improvement Association, dated November 9, 1910.

On the basis of this material, and our previous discussion with Mr. Waterhouse and representatives of the Association, will you please advise as to the following questions:

1. Do the records (that is, the charter, by-laws, and amendments to by-laws) indicate two organizations, one a corporation and one an association?
2. Does either organization (assuming there are two) qualify for property tax exemption?
3. If so, is property held by trustees in the manner indicated by the deeds, subject to exemption if used for the Association's own purposes?
4. On the basis of our discussion with representatives of the Association in this office on November 3, would you consider the property to be so used?

EHJ:J