

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

for the calender years

1965 - 1966

*ANSWER:*

No.

*REASON:*

The tenor of 20 M.R.S.A. § 3161 is that the State shall participate in a program whereby public school teachers are trained "to meet the educational needs of mentally retarded children." The section does not admit of an interpretation that teachers in either an approved private school or teachers in the Pineland Hospital and Training Center may participate in the program.

JOHN W. BENOIT  
Assistant Attorney General

January 18, 1966  
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Taxation of Personal Property of Banks

*FACTS:*

The factual situation that is treated in the following pages deals with the legality of municipalities subjecting tangible personal property owned by trust companies within the geographical boundaries of the State of Maine to local personal property taxation.

*ISSUE:*

Whether or not municipalities may subject personal property owned by trust companies within the State of Maine to personal property taxation during the same period a bank stock tax is being levied pursuant to 36 M.R.S.A. § 4752?

*ANSWER:*

No; municipalities may not, legally, levy personal property taxes against trust companies located within the State of Maine.

*LAW:*

36 M.R.S.A. § 601

§ 601 Personal property; defined

"Personal property for the purposes of taxation includes all tangible goods and chattels wheresoever they are and all vessels, at home or abroad." R.S. 1954, c. 92, § 5; 1955, c. 399, § 1; 1961, c. 223, § 4.

36 M.R.S.A. § 602

§ 602. — Where taxed

“All personal property within or without the State, except in cases enumerated in section 603, shall be taxed to the owner in the place where he resides.” R.S. 1954, c. 92, § 13; 1955, c. 399, § 1.

36 M.R.S.A. § 4751

§ 4751. List of stockholders; real estate report.

“On or before April 15th of each year, the treasurer of every trust company organized under the laws of this State and the cashier of every banking institution formed under the laws of the United States, doing business in this State, shall send to the State Tax Assessor a list of all common stockholders and their residences, showing the number of shares owned by each on the first day of April, together with the value of the real estate, vaults and safe deposit plant owned by each trust company or banking institution, which is taxed as other real estate is taxed in the town in which it is located, and the amount for which said real estate, vaults and safe deposit plant was valued by the assessors of such municipality for the year previous.” R.S. 1954, c. 16, § 154.

36 M.R.S.A. § 4752

§ 4752. Tax on stock; payment; appeals

“The State Tax Assessor shall determine the value of shares of stock reported, as provided for in section 4751, and deduct therefrom the proportionate part of the assessed value of such real estate, vaults and safe deposit plant. Upon the value of said shares so determined after making said deductions, the said Tax Assessor shall assess an annual tax of 15 mills for each dollar of such assessed value so determined, and shall, on or before the first day of June, notify said trust companies and banking institutions. All taxes so assessed shall be paid by said trust companies and banking institutions to the State Tax Assessor on or before the first day of July, and *said tax shall be in lieu of all municipal or other taxes upon said stock, and said trust companies and banking institutions may charge the tax so paid pro rata to the individual stockholders thereof.* The State Tax Assessor shall pay over all receipts from such tax to the Treasurer of State daily. (Emphasis supplied).

REASONS:

In first analyzing the statutes that we are here directly concerned with, we see from 36 M.R.S.A. §§ 601, 602 that all tangible personal property is taxed to the owner “where he resides.” We must then look to 36 M.R.S.A. §§ 4751, 4752 as set out above, and find that there is specifically an enactment set down by the Legislature whereby the State Tax Assessor is directed to assess a tax on the stock held by stockholders of banking institutions located within the State of Maine and more specifically trust companies, for the purpose of the situation at hand. Reading further in the same section,

it can be seen that the Legislature specifically prohibits municipalities from levying local taxes upon the "stock" in question. At this point the question arises as to whether or not the municipality, in carrying out the authority vested in it by 36 M.R.S.A. §602, is, in effect, transgressing the clear exception as stated in 36 M.R.S.A. §4752, that portion being in italics. And lastly, it must be determined as to whether or not a municipality in levying a personal property tax on such personal property of a trust company is acting in such a manner whereby a situation is created whereby a levying of both taxes would constitute double taxation.

Generally speaking, "double taxation" is frequently used to connote any situation in which it can be contended with some show of reason that the same person or property has been subjected to more than one tax burden.

It is frequently stated that before invalid double taxation may be said to exist, both taxes must have been imposed in the same year, for the same purpose, upon property owned by the same person, and by the same taxing authority. However, the criteria that need exist for the presence of double taxation vary from jurisdiction to jurisdiction. Applying the theory of "double taxation" to the situation at hand can be stated as follows: Will "double taxation" exist wherein taxes are imposed on the corporate property and on the shares in the hands of the stockholders? This question must be answered in the affirmative within the State of Maine.

The case of *Inhabitants of East Livermore v. the Livermore Falls Trust and Banking Company*, 103 Me. 418 (1907) states clearly the proposition that "To tax the shares of a corporation to the shareholders, and to tax at the same time the property of the corporation to the corporation itself, imposes in effect, if not in theory, a double tax burden on the shareholders."

The Court went on to state at page 424 that "It is elementary that no tax can be imposed without express statutory authority, that such authority is to be construed strictly against the State, and particularly that no double tax burden shall be imposed on any person or property unless the statutes so clearly require it that no other construction is possible in reason." In conclusion, the Court in the *Livermore* case illustrates, what is in effect, a legislative policy of this State against "double taxation" and proposes the fact that not only is there no intention to impose "double taxation" but there is an "anxiety" to avoid it.

The *Livermore* case taken along with the generally held proposition "That the general principle that an intention to impose duplicate taxation is not to be presumed is applicable with respect to the taxation of the various elements of value in the corporate structure, and accordingly, that statutes will not be construed as revealing an intention that both the capital or property of the corporation and the individual shares should be taxed unless such intention is clearly and unequivocally expressed." 51 Am. Jur. § 294.

The above shows clearly that the Maine Legislature does not intend, at least at the present, to have municipalities levy personal property taxes upon trust companies during the time said property is being assessed upon through the bank stock tax set out in 36 M.R.S.A. § 4752.

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