

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

Linwood F. Wright, Inspector

Payment of Excise Tax by Non-Resident Owner of Aircraft

FACTS:

Air General Inc. of Boston, Massachusetts owned and operated a helicopter in Maine during the month of July, 1966. The operation was under contract to either the navy or coast guard and operated from Millinocket, Bar Harbor and Belfast.

Air General Inc. has attempted to register the aircraft with the Maine Aeronautics Commission without paying an excise tax on the belief that since they are under contract to the government, they are not operating commercially and need not pay the excise tax.

QUESTION:

May Air General Inc., a non-resident owner of an aircraft operated principally within the State of Maine pursuant to a contract with the United States Government, register the aircraft in the State of Maine without paying an excise tax?

ANSWER:

No.

REASON:

6 M.R.S.A. § 44 (2) provides in part:

“ . . . All non-resident aircraft owners engaged in air commerce within the State shall register such aircraft with the commission and pay a fee of \$25 for each registration.

“A. No aircraft shall be registered under this section until the excise tax or personal property tax has been paid in accordance with Title 36, sections 1482 and 1484.”

6 M.R.S.A. § 44 (4) contains exemptions to the requirements for registration pursuant to the section. The first four listed exemptions under 6 M.R.S.A. § 44 (4) pertain to aircraft registration and are as follows:

“4. Exemptions. This section shall not apply to:

“A. An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the Government of the United States, any state, territory or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

“B. An aircraft registered under the laws of a foreign country and not engaged in air commerce within the State;

“C. An aircraft not engaged in air commerce within the State which is owned by a non-resident and registered in another state, or otherwise qualified therein;

“D. An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;”

Paragraph A does not apply to the given fact situation as the aircraft is not owned by the Government of the United States. Paragraph B does not apply to the given fact situation as the aircraft is not registered under the laws of a foreign country. Paragraph D does not apply as the aircraft was engaged principally in flying within the State of Maine.

The question then arises does paragraph C apply? If so, the aircraft need not be registered nor an excise tax paid. We are satisfied that the aircraft was engaged in "air commerce" within the State of Maine and the exemption does not apply.

"Air Commerce" is defined by our statutes as follows:

"4. Air commerce. 'Air commerce' means the carriage by aircraft of persons or property for compensation or hire, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation." 6 M.R.S.A. § 3 (4).

It is clear that the contractual relationship between Air General Inc. and the United States Government has resulted in the operation or navigation of an aircraft in the conduct or furtherance of the business of Air General Inc. Hence, the aircraft was engaged in "air commerce."

Since Air General Inc.'s aircraft did not fall within any of the applicable exemptions of 6 M.R.S.A. § 4, Air General Inc. must register the aircraft and pay the excise tax.

JEROME S. MATUS
Assistant Attorney General

September 27, 1966
Audit

Armand G. Sansoucy, State Auditor

Petition for State Postaudit by Municipality

FACTS:

On August 29, 1966, seventy voters in a municipality filed a petition under 30 M.R.S.A. § 5253, sub § 1, asking the Department of Audit to conduct a postaudit of the municipality's books for the years 1963, 1964, and 1965.

Subsequently, on September 2, 1966, twelve of the original signers filed petitions with the Department of Audit stating:

"... we misunderstood the purpose of said earlier petition and had been given to understand that it was for the purpose of calling a town meeting to consider the matter and, therefore, now pray that our names be removed from said earlier petition, and that no audit be made because of the expense to the Town."

On September 23, 1966, twenty-one of the original petitioners, including nine of the twelve who signed the second petition, filed a petition with the Department of Audit containing the same language quoted above in the second petition.

Seventy voters constituted more than 10% of the voters. If twenty-four names are deducted, the remaining forty-six would be less than the required 10%.

QUESTION:

Once a valid petition is filed with the Department of Audit pursuant to 30 M.R.S.A. § 5253, sub § 1, may individual signers withdraw their names from the petition?