

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

for the calender years

1965 - 1966

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?

*ANSWER:*

No.

*REASONS:*

The previously cited statute reads:

"When there is dissatisfaction with a postaudit made by a public accountant as shown by a petition signed by at least 10% of the voters of a municipality or village corporation, but in no case more than 1,000, and filed with the State Auditor, he shall order a new postaudit to be made by his department, the expense of which shall be paid by the municipality or village corporation."

The wording of the statute contemplates three stages in this process. (1) A dissatisfaction with a postaudit performed by a public accountant (2) the signing of a petition requesting a postaudit by the State Auditor and (3) the filing of the completed petition with the State Auditor.

All three steps must be completed before the State Auditor can act. The process might proceed through the first two steps, i.e., dissatisfaction and the signing of a petition. At this stage nothing has been accomplished. Signers may withdraw, the sponsors may hold up the filing of the petition, but once the signed petition is filed with the State Auditor, he must act. He is given no alternative but "he *shall* order a new postaudit to be made by his department." (Emphasis supplied).

The process has been completed by the filing of the petition with the State Auditor. He must now make the requested postaudit. There is no provision in the statutes for the withdrawal of the petition or of individual names signed on the petition. The Legislature can make provision for withdrawal, but until it does no withdrawal of names may be effected after the petition has been filed.

GEORGE C. WEST  
Deputy Attorney General

October 8, 1965  
Education

Hayden L. V. Anderson, Executive Dir.  
Div. of Professional Services

Requirement that Gorham State College Students Purchase Health and Accident Insurance

*FACTS:*

Gorham State College requires that each student purchase health and accident insurance, at a cost of \$18 per year. The reference college catalogue contains the following proviso regarding insurance:

"Health and accident insurance, which is required of all students at a nominal fee, covers a portion of hospitalization, surgery, medication, and care by a physician."

This fall, a parent of one of the Gorham State College students has objected to the payment of the insurance fee on the grounds that the charge is illegal.