

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

having filed in order to avoid the statutory penalties, then be relieved from filing as the result of a hearing *after* the expiration of the 30-day period and cancel his insurance, his out-of-pocket expense for insurance premiums would be negligible. The protection afforded to the motoring public by imposing the filing requirement during the period when the operator's liability for filing is in doubt far outweighs the minimal financial burden on the operator.

ROBERT G. FULLER, JR.
Assistant Attorney General

July 21, 1967
Agriculture

Paul J. Eastman, Deputy Commissioner

Interpretation of Section 2104, Title 7 of the Revised Statutes.

FACTS:

The law provides that a grower of certain crops or grain seeds may make application to the Commissioner of Agriculture for the inspection and certification of said crops or seeds. The growers enter into a contractual agreement to pay into the State Treasury a fee for the inspections and certification. (7 M.R.S.A. § 2101-2103)

7 M.R.S.A. § 2104 provides as follows:

“No person who is in arrears as to payment for past services of the department under sections 2101 to 2103 shall be entitled to further services until payment of all such arrears shall have been made.”

In essence you have asked the following question:

QUESTION:

Are delinquent debts owed the state which have been written off by the Governor and Council still considered to be owed the state and may the Department of Agriculture collect such debts under the terms of 7 M.R.S.A. § 2104 quoted above?

ANSWER:

See opinion.

OPINION:

The legislature has provided that under certain conditions the state or one of its agencies or departments may charge off certain debts.

5 M.R.S.A. § 1504 Charging off accounts due state

“The State Controller shall charge off the books of account of the State or any department, institution or agency thereof, such accounts receivable, including all taxes for the assessment or collection of which the state is responsible, and all impounded bank accounts, as shall be certified to him as impractical of realization by or for said State, department, institution or agency. Such certification shall be by the Attorney General, the Commissioner of Finance and Administration and the Treasurer of State, subject to the approval of the Governor and Council. In

each such case, the charging off of such accounts shall be recommended by the head of the department, institution or agency originally responsible for such account.” (Emphasis supplied.)

The charge off of a contractual debt owed the state by a debtor is not an extinguishment or discharge of the debt itself. Such a charge off actually represents an administrative determination by the state as creditor that the debt which is owed is for all practical purposes uncollectible as a bad debt. In other words, the legislature has merely provided in 5 M.R.S.A. § 1504 that the state as creditor may elect not to attempt to enforce certain contractual obligations. This does not mean that a debt which has been written off by the state may never be collected in the future however.

The language of 7 M.R.S.A. § 2104 quoted in the factual situation provides in effect that a delinquent debtor must pay for past indebtedness incurred for services rendered by the Department of Agriculture as a condition precedent to the receipt of further similar services by the Department. This is true whether or not such past indebtedness was at one time written off by the state as being uncollectible.

We believe that it is entirely proper for the legislature to provide that the state demand payment of prior debts for services rendered as a condition precedent to the supplying of further similar services to a debtor.

The Department of Agriculture, as creditor, may elect not to enforce the payment of a contractual debt pursuant to the terms of 5 M.R.S.A. § 1504. Read in conjunction with the language of 7 M.R.S.A. § 2104 however, we do not believe that the Department may excuse the payment of past contractual indebtedness incurred by a debtor and at the same time, enter into new contractual agreements to provide further services to said debtor.

PHILLIP M. KILMISTER
Assistant Attorney General

August 2, 1967
Maine State Retirement System

E. L. Walter, Executive Secretary

P. L. 1967, Chapter 59 – Relationship of Board of Trustees of the Maine State Retirement System and a Bank Fiduciary Employed by said Board.

FACTS:

Because of certain statutory amendments to the law governing the administration of the Maine State Retirement System, you have asked two general questions relative to the responsibility and authority of the Board of Trustees and a bank fiduciary to be employed by the Board. In reference to recently enacted statutory language you have asked the following questions:

QUESTION NO. 1:

Does the phrase “the framework of the general investment policy of the Board of Trustees” imply that the Board is limited to making policy or may the Board give instructions in detail or to any degree between these two positions? What would you consider to be the extent of the “investment functions” of the Board?