MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

Senate, *or as a member of the Executive Council,* shall have deductions taken from his salaries and shall be entitled to all applicable rights and benefits of this Title. Any such member shall become entitled to receive time credits for the duration of his election or until such time as he shall officially resign from the House of Representatives or the Senate, *or as a member of the Executive Council,* but in no instance shall he receive more than one year of creditable service in any one-year period.' "

A retired person served two terms on the Executive Council. He served in this capacity and retired from Maine State Retirement System employment before the enactment of P. L. 1967 Chap. 57.

QUESTION:

Whether this retired person is included for retirement benefits under P. L. 1967 Chap. 57 by virtue of prior service on the Executive Council?

ANSWER:

No.

OPINION:

Section 2 of Chapter 57 quoted above uses the word "member" in each of its three sentences. Thus, only "members" who have served on the executive council may receive appropriate creditable service for executive council service.

5 M.R.S.A., section 1001, subsection 12, defines "member":

"Member" shall mean any employee included in the membership of the retirement system, as provided in section 1091."

Section 1091, subsection 6, states:

"Should any member withdraw his contributions, *or should he become a beneficiary as a result of his own retirement,* or die, *he shall thereupon cease to be a member.*" (Emphasis supplied.)

The law clearly states a beneficiary or person drawing a retirement allowance is not a "member" of the system. Therefore, we must conclude that such a person may not secure an increase in his retirement allowance because of executive council service.

WARREN E. WINSLOW, JR.
Assistant Attorney General

October 30, 1967
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: Application of Sales and Use Tax Law to Federal Credit Unions and Federal Savings and Loan Companies

FACTS:

Your memorandum of September 22, 1967, asks whether Federal Credit Unions and

Federal Savings and Loan Companies are subject to the provisions of the Maine Sales and Use Tax Law, particularly in view of the amendment to the Law in Chapter 116 of the Public Laws of 1967.

This legislation was drafted by this office for the express purpose of changing the Sales and Use Tax status of national banks. Briefly, previous opinions reasoned that sales *to* national banks or other federal banks are exempt because of the specific exemption accorded them under the sales and use tax law as agencies of the Federal Government.

We also previously ruled that sales *by* national banks are exempt and that national banks are not required to pay a use tax. We have also ruled that a use tax may be imposed upon the purchaser of tangible personal property sold by a national bank in the ordinary course of business. (See opinions of May 4, 1953; October 4, 1961; October 10, 1961.)

However, the law has now been changed so that sales to incorporated agencies of the Federal Government are exempt only if the agency is wholly owned by the Federal Government.

LAW:

This amendment provides that no tax on sales, storage or use shall be collected upon or in connection with:

> "Sales to the State or any political subdivision, or to the Federal Government or to any *unincorporated* agency *or instrumentality* of either of them *or to any incorporated agency or instrumentality of them wholly owned by them.*" P.L. 1967, Ch. 116 (italic indicates language added by amendment.)

QUESTION:

Whether Federal Credit Unions and Federal Savings and Loan Associations come within the above language so as to be not subject to the sales and use tax law.

ANSWER:

See reasons, below.

REASONS:

Federal Credit Unions

In order to determine the tax status of Federal Credit Unions, under the amended language of the sales and use tax law, it is important to know their legal structure.

A Federal credit union is defined as a cooperative association organized in accordance with the provisions of Title 12 U.S.C.A. for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes. (12 U.S.C.A. § 1752.)

A Federal credit union is organized as a body corporate and in all respects is a corporation with shareholders. (12 U.S.C.A. § 1753 and § 1754.)

Federal credit union membership consists of the incorporators and such other persons as may be elected to membership and as subscribe to at least one share of stock. (12 U.S.C.A. § 1759).

There also appears within the provisions concerning federal credit unions a section concerning permissible taxation by the states.

This provision provides:

"The Federal credit unions organized hereunder, their property, their franchises, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial or local taxing authority; except that any real property or any tangible personal property of such Federal credit unions shall be subject to Federal, State, Territorial and local taxation to the same extent as other similar property is taxed . . . ." (12 U.S.C.A. § 1768.)

It appears from a review of the above sections that a Federal credit union is an incorporated entity and is not wholly owned by the United States. It is in fact owned by its various shareholders. Therefore sales *to* a Federal credit union are taxable since they are not within the import of the above exemption provision.

As to the import of the tax provision (§ 1768, supra), we reach the same conclusion in respect to Federal credit unions as we have reached in the case of national banks.

The Supreme Court of the State of Maine has held in the case of *W. S. Libbey v. Johnson,* (1953) 148 Me. 410 that the incidence of the tax is on the *seller.* A tax on *sales to* a Federal credit union, the incidence of which is on the seller, would therefore not violate the taxing provision. However, such a provision would be violated if a tax was levied or *sales by* a Federal credit union, or if a use tax were levied on *purchases by* a Federal credit union since the incidence of tax, in each instance, would be on the Federal credit union.

Federal Savings and Loan Associations

As in the case of Federal credit unions, we must examine the legal structure of Federal Savings & Loan Associations in order to determine their taxability.

The term "association" means a Federal Savings and Loan Association chartered by the Federal Home Loan Bank Board. (12 U.S.C.A. § 1462.)

Federal Savings and Loan Associations are organized under the provisions of 12 U.S.C.A. § 1464 which provides for a corporate organization. Further provision is found to indicate that such associations shall raise their capital only in the form of payments on such shares as are authorized as in their charter.

There are provisions concerning purchase of certain shares by the Secretary of the Treasury contained in 12 U.S.C.A. § 1464(g) and (j).

However, under the former provision, the Secretary of Treasury, while authorized on behalf of the United States to subscribe for certain preferred shares in such associations, is limited in dollar amount of purchases. There is also a limitation providing that the aggregate amount of the shares held by the Secretary of Treasury shall not exceed at any the aggregate amount of shares held by all of the shareholders.

Subsection (j) provides that the Secretary of the Treasury, may on behalf of the United States, subscribe for an amount of full paid income shares in such associations. The amount paid in by the Secretary of the Treasury for such shares under subsection (j) and under subsection (g) together, however, can at no time exceed 75% of the total investment in the shares of such association by the Secretary of the Treasury and other shareholders.

It is seen that these two subsections indicate that although a Federal Savings and Loan Association may be in part owned by the Federal Government, it cannot become wholly owned by the government.

It has also been held that a Federal Savings and Loan Association organized and chartered by Federal Home Loan Bank Board was an instrumentality and agency of the

United States. See *People of the State of California vs. Coast Federal Savings and Loan Association,* D. C. California 1951, 89 Fed. Supp. 311. See also *State vs. Minnesota Savings and Loan Association,* 1944, 15 N. W. 2d 568, 218 Minn. 220.

There is also present in the law concerning Federal Savings and Loan Associations a provision prohibiting taxation by the States except to the extent permitted by Congress. (12 U.S.C.A. § 1464 (h).

However, even though a Federal Savings and Loan Association may be an instrumentality of the United States, it is not wholly owned by the United States.

Thus, the tax treatment to be accorded to Federal Savings and Loan institutions would be the same as that accorded to national banks and Federal credit unions, that is, a tax would be collected upon sales *to* Federal Savings and Loan Associations since the incidence of tax is not upon them, but no tax could be collected upon sales by such associations and no use tax could be collected from such associations upon their purchases.

JON R. DOYLE
Assistant Attorney General

November 1, 1967
State Probation & Parole

John J. Shea, Director

Waiver of Right to Hearing by Inmate

FACTS:

This office has been asked by the State Probation and Parole Board to render an opinion as to whether or not an inmate of a State correctional institution can waive his right to appear before the Board at hearings under 34 M.R.S.A. § 1672, 1673 and 1675.

QUESTION:

Whether or not an inmate can waive his right to appear at hearings under 34 M.R.S.A. §1672, 1673 and 1675?

ANSWER:

Yes.

OPINION:

34 M.R.S.A.§1672 reads in part as follows:

"A prisoner at the Maine State Prison becomes eligible for a hearing by the board as follows:

"..."

34 M.R.S.A. § 1673 reads in part as follows:

"An inmate at the Reformatory for Men becomes eligible for a hearing by the board as follows:

"..."

This language clearly indicates that a hearing on parole under each of these sections is a privilege given to the inmate, and not a right. As there is no right in the inmate to be