STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

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.

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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

present at such a hearing under these Statutes, any privilege he may be given to attend can be easily waived by the inmate. *Bragg v. Hatfield,* 124 Me. 391, 130 Atl. 233 (1925).

34 M.R.S.A. § 1675 reads in part as follows:

". . . At its next meeting at that institution the board shall hold a hearing. The parolee is entitled to appear and be heard. . . ."

A hearing under this section is a right and must be observed. However, the words "entitled to appear" give the inmate the right to appear; but, this right can be waived. The general rule on waiver is stated in 28 Am Jur 2d *Estoppel and Waiver* § 167:

". . . On the principal that errors and irregularities that are not jurisdictional may be waived, an accused may generally waive such matters as the right to counsel, the privilege of immunity from self-incrimination, the right to preliminary hearing or examination, the right to a speedy trial, the right to a public trial, the right to service of copy of indictment or information upon the accused, the right to be arraigned, the right to time to prepare for trial, the right to be tried in the county or district in which the offense was ellegedly committed, the right to challenge a juror for disqualification, the right to the full number of jurors, the right to be confronted by witnesses and have them examined, the right to poll the jury, the quaranty against double jeopardy, and the guaranty against delay in the imposition of sentence . . ."

Again, in 92 C.J.S. *Waiver* at pps. 1066-1068:

". . . the doctrine of waiver extends to rights and privileges of any character, and, since the word "waiver" covers every conceivable right, it is the general rule that a person may waive any matter which affects his property, and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract, conferred by statute, or guaranteed by constitution, provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of others, and further provided the waiver of the right or privilege is not forbidded by law, and does not contravene public policy; and the principle is recognized that everyone has a right to waive, and agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right and without detriment to the community at large. Whether the right relinquished is of great or little value does not affect the capacity of its owner to relinquish it."

Although there appears to be no case which answers the precise question presented, companion cases in related areas show that the right to be present at these types of hearings can be waived, as well as those rights previously mentioned, as it is of the same genus. For example, see *Escabedo v. Illinois,* 378 U.S. 478 (1963) (right to counsel); *Latimer v. State,* 55 Neb. 609 (1898) (right to preliminary hearing or examination); *Randolph v. State,* 234, Ind. 57, 122 N.E. 2d 860 (1954) (right to speedy trial); *Garland v. Washington,* 232 U.S. 642 (1914) (right to be arraigned).

We are therefore of the opinion that an inmate can waive personal appearance before the Board at these types of hearings.

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