

MAINE STATE LEGISLATURE

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February 28, 1968

To: Ernest H. Johnson, State Tax Assessor Bureau of Taxation
From: Jon R. Boyle, Assistant Attorney General " "
Subject: Real Estate Transfer Tax

FACTS:

Title 36 M.R.S.A. §4652, as enacted by Chapter 537, Section 1 of the Public Laws of 1967, provides for a tax on real estate transfers and indicates that the State Tax Assessor is authorized and empowered to carry the law into effect. He is further empowered to make and enforce such reasonable rules and regulations consistent with the Chapter as he may deem necessary, including the appointment of the several registers of deeds, or such other agents as he may designate, as sales agents.

QUESTION:

Whether, if the several registers of deeds are appointed as sales agents under Chapter 537, such appointments are contingent upon affirmative acceptance by the several registers?

LAW:

"The State Tax Assessor shall prepare tax stamps of varying denominations which will become available for purchase at their denominated value. The State Tax Assessor is authorized and empowered to carry this chapter into effect and, in pursuance thereof, to make and enforce such reasonable rules and regulations consistent with this chapter as he may deem necessary, including the appointment of the several registers of deeds or such other agents as he may designate as sales agents and providing for compensation of such agents, which compensation shall not exceed a 10% commission of the legal price of the stamps sold and when such stamps are sold by the registers of deeds the said 10% shall be for the use of the counties, and the said sums shall be turned over by the registers of deeds to the county treasurers monthly." Title 36 M.R.S.A. §4652 as added by Ch. 537 of the Public Laws of 1967.

ANSWER:

Yes.

Ernest H. Johnson, State Tax Assessor

February 28, 1968

REASONS:

In order to determine whether affirmative acceptance of appointment by the registers of deeds is necessary we must examine the language of the law and determine its meaning.

"The fundamental rule of statutory construction is to ascertain and carry out the legislative intent. The language of the statute is 'the vehicle best calculated to express the intention' but the court will 'look at the object in view'". Acheson et al v. Johnson, 147 Ma. 275, 280.

"Intent is sought from the language used without supplying language or doing violence to it."
Acheson et al v. Johnson, supra.

The pertinent language for interpretation here is "...including the appointment of the several registers of deeds...." Should this language be interpreted as requiring the registers to serve if appointed?

The legislative history of the provision furnishes help in interpretation. Originally the legislature was presented with a bill completely different from that passed in final form. This bill went through two committee re-drafts. A perusal of the copy of the original committee re-draft indicated that the registers of deeds were not mentioned therein as being susceptible of appointment as sales agents. The language which appeared therein was "...including the appointment of any necessary sales agents...."

The second re-draft added the language concerning registers of deeds.

It is our understanding that it was the intent of the committee in changing its original draft language to specifically include as possible sales agents the registers of deeds. It was deemed necessary to provide specifically for their possible appointment since as public officials whose duties are prescribed by statute they can exercise only those powers granted to them.

There is however no indication that in the event they were appointed they had no choice in whether to serve or not. There is no language requiring them to serve. If the legislature had desired to make their agency mandatory upon appointment by the State Tax Assessor it could have so provided. (See Title 31 N.R.S.A. §651 et seq requiring the registers of deeds to perform certain acts).

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Since in the normal case an agency relationship implies a consensual relationship (See 2 CJS Agency 81) and since there is no indication that registrars are required to serve as agents of the State Tax Assessor we advise that their consent is necessary to appointment.

JRD:lpn