

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

452, 456 and *Camp Walden v. Johnson*, 1960, 156 Me. 160, 165).

The Court in *Business Statistics* stated the meaning of the word "periodical" in the following language (citing *Houghton v. U.S.* 194 U.S. 88 at 97):

"A periodical, as ordinarily understood, is a publication appearing at stated intervals, each number of which contains a variety of original articles by different authors, devoted either to general literature of some special branch of learning or to a special class of subjects. Ordinarily each number is incomplete in itself, and indicates a relation with prior or subsequent numbers of the same series. It implies a continuity of literary character, a connection between the different numbers of the series in the nature of the articles appearing in them, whether they be successive chapters of the same story or novel or essays upon subjects pertaining to general literature\*\*\*" *Business Statistics Organization v. Joseph*, supra at p. 508.

The court also went on to explain the meaning of the word "literature" when used in the statutory context:

". . . 'literature' in this context means 'no more than productions which convey ideas by words, pictures, or drawings' ". (Citing *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 153, 66 S. Ct. 456, 460, 90 L. Ed.) *Business Statistics Organization v. Joseph*, supra at p. 508.

It is the sense of the meaning of the word as used in the statute that a "publication" or "periodical", as literature, is something that conveys ideas by words, pictures or drawings. Too, a "publication" or "periodical" appears at regular intervals, contains a variety of articles relating to a particular class of subjects and implies a continuity of literary character. Therefore, a tape recording, of such information is as much a periodical as is a printing containing the same information.

So long as the tape recording contains information within the above definition and it is published at regular stated intervals within the statute, it would be exempt.

In this case "Surgery Digest" is published at regular stated intervals, it contains a variety of original articles by different authors; they are devoted to a special class of subjects, they are incomplete in and of themselves and indicate a relation to prior and subsequent issues and they have a continuity of literary character.

"Surgery Digest" tape recordings issued at two week intervals should be considered exempt publications within the meaning of Title 36 M.R.S.A. § 1760 (14).

JON R. DOYLE  
Assistant Attorney General

March 13, 1968  
Water and Air Environmental  
Improvement Commission

George Gormley, Civil Engineer

Drainage of Sanitary Sewage into Wetlands under Jurisdiction of Wetlands Control Board.

**FACTS:**

A municipality proposes to drain sanitary sewage from a treatment plant onto wetlands bordering coastal waters.

*QUESTION:*

Must the municipality comply with the provisions of Me. Rev. Stat. Ann., Tit. 12, §§ 4701-4709 (Supp. 1967)?

*ANSWER:*

Yes. Sections 4701-4709 apply in terms to municipalities. The municipality in question will have to receive clearance from the Wetlands Control Board and from the officers of the municipality where the proposed drainage will take place prior to actual operation.

ROBERT G. FULLER, JR.  
Assistant Attorney General

March 14, 1968  
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: Allowances to Retail Gasoline Dealers for Shrinkage Losses

*FACTS:*

The State Tax Assessor has received refund applications for shrinkage or loss by evaporation, in good order, from two retail gasoline dealers who presently owe the State of Maine sums as licensed dealers under the Use Fuel Act. In one case, the dealer owes both tax and penalties, the total amount exceeding the amount of the refund claim; in the other case, the dealer owes penalties only in an amount less than the refund claim.

There is no general statutory provision permitting off-setting amounts due the State from refunds.

*QUESTION:*

May the State Tax Assessor apply the amount of refund to which the applicant would otherwise be entitled, to the amount of tax and/or penalty due the State by the applicant, before paying the balance, if any, to the applicant?

*LAW:*

“\*\*\*\*

. . . any retail dealer shall be entitled to a refund for tax paid on account of shrinkage or loss by evaporation of motor fuel. The procedure for such refund shall be as follows:  
\*\*\*\*

The conditions of subsections 1 to 3 having been fully complied with, the Tax Assessor shall calculate the amount of the refund due on such application and shall certify such amount and the name of the person entitled to the refund to the Treasurer of State. The Treasurer of State shall thereupon make such certified refund from said road taxes.” Title 36 M.R.S.A. § 2906.