

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

publications under the Maine Sales and Use Tax Law?

ANSWER:

Yes.

LAW:

“A tax is imposed on the storage, use or other consumption in this State of tangible personal property, purchased at retail sale at the rate of 4½% of the sale price. Every person so storing, using or otherwise consuming is liable for the tax until he has paid the same or has taken a receipt from his seller, thereto duly authorized by the Tax Assessor, showing that the seller has collected the sales or use tax, in which case the seller shall be liable for it. Retailers registered under sections 1754 or 1756 shall collect such tax and make remittance to the Tax Assessor.” Title 36 M.R.S.A. § 1861.

REASONS:

The seller is registered pursuant to 36 M.R.S.A. § 1754. Normally, the seller would be required to collect from the purchaser the applicable sales tax, however, being an agent of the U.S. Government, the seller cannot be compelled to collect and remit a sales tax. Nevertheless, these charts and publications are purchased at retail sale, and as a result, a use tax is due and payable on them, which the seller must collect and remit to the Tax Assessor. Title 36 M.R.S.A. § 1861 states that “Retailers registered under section 1754 . . . shall collect such tax and make remittance to the Tax Assessor.”

It should be noted that a sales tax is unenforceable because the incidence of the tax is on the retailer, who, on these facts, is an agent of the United States Government. *W. S. Libbey and Co. v. Johnson*, 148 Me. 410. However, the use tax is proper because the incidence of the tax is on the purchaser, not the retailer. *Northwestern National Bank of Sioux Falls v. Gillis*, 148 N. W. 2d 293; *Bank of America National Trust and Savings Asso. v. State Board of Equalization*, 26 Cal. Rptr. 348; *Felt & Tarrant Co. v. Gallagher*, 306 U.S. 62.

WENDELL R. DAVIDSON  
Assistant Attorney General

April 25, 1968  
Executive

Allen G. Pease, Administrative Asst.

Compatibility of Judge of Probate and Commissioner on Uniform State Laws

SYLLABUS:

The offices of Judge of Probate and Commissioner on Uniform State Laws are incompatible.

FACTS:

A Judge of Probate has been a Commissioner on Uniform State Laws for a number of years. His term of office has expired.

3 M.R.S.A. § 241 provides that a Commission of three members having terms of 4 years each shall be appointed by the Governor with the advice and consent of the Council.

Article VI, Section 5 of the Constitution reads:

“No Justice of the Supreme Judicial Court or any other court shall hold office under the United States or any other state, nor under this State, except as justice of the peace or as member of the Judicial Council.”

*QUESTION:*

May a Judge of Probate legally be a Commissioner on Uniform State Laws?

*ANSWER:*

No.

*REASON:*

The Commissioner on Uniform State Laws is an “office . . . under this State.” It does not come within the two exceptions, justice of the peace or Judicial Council. Hence, a judge of probate is not eligible for the office.

GEORGE C. WEST  
Deputy Attorney General

May 9, 1968  
Economic Development

James K. Keefe, Commissioner

Scope of the Maine Industrial Building Authority Act

*SYLLABUS:*

Under the State Constitution, Art. IX, § 14-A and 10 M.R.S.A. § 701-852 the Maine Industrial Building Authority may issue mortgage insurance on existing buildings and machinery in the State.

*FACTS:*

The Department of Economic Development has requested an opinion as to whether or not the Maine Industrial Building Authority may issue mortgage insurance on existing buildings and machinery in the State.

*QUESTION:*

Whether or not the Maine Industrial Building Authority may issue mortgage insurance on existing buildings and machinery in the State?