

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

(1964). Therefore, a state official may be a party to the contract without incurring the penalties of the statute.

However, the Executive Council may be called upon to approve an emergency appropriation for the University, to confirm its trustees, or to take some other action affecting the rights and interests of that institution. It would appear, then, on common-law principles, that for a Councillor to contract with the University, even on a bid basis as here, would to some extent jeopardize the arm's-length disinterested relationship called for when making a decision in his capacity as Councillor regarding the University. The role of contractor with the University would, therefore, conflict with the duties of an Executive Councillor. *Cf. Howard v. Harrington*, 114 Me. 443 (1916).

ROBERT G. FULLER, JR.
Assistant Attorney General

May 23, 1968
Water and Air Environmental
Improvement Commission

Robert H. Smith, Sanitary Engineer

Transferability of Waste Discharge Licenses.

SYLLABUS:

The privileges of a waste discharge license issued to a corporation under 38 M.R.S.A. § 414 (1964) accrue only to that corporation, and upon acquisition of the licensee corporation by another corporation, or upon sale to another corporation of the facility which is the source of the licensed effluent, the license is extinguished and does not pass to the successor corporation either by operation of law or by a purported assignment.

FACTS:

In 1960 corporation X applied for and was granted a license by the Water and Air Environmental Improvement Commission to discharge wastes. In 1964, corporation X was acquired by corporation Y. In 1967, corporation Y sold to corporation Z the plant from whence came the discharge. No application for discharge license has ever been made to the Commission by corporations Y or Z.

QUESTIONS:

1. Where a corporation previously granted a waste discharge license is acquired by another corporation, does the acquiring corporation succeed by operation of law, or may it succeed by assignment, to the privileges conferred by the license?
2. Where a corporation previously granted a waste discharge license sells to another corporation the facility from which the licensed discharge emanates, do the privileges conferred by the license pass to the buyer corporation either by operation of law or by a provision in the terms of the sale that such privileges shall pass?

ANSWERS:

No, to both questions.

REASON:

A license to discharge waste is granted only after a public hearing and a determination by the Commission that, on the evidence presented, the proposed discharge, either of itself or in combination with existing discharges, will not lower the classification of any body of water. 38 M.R.S.A. § 414 (1964). The evidence put in by the applicant concerning the composition of the proposed discharge is one of the major factors considered by the Commission in determining whether to grant a discharge license. Accordingly, the issuance of such a license pre-supposes that the Commission believed such evidence. A relation of trust or confidence has been created between the licensee and the Commission. The license, issued under such circumstances is patently intended as a personal privilege accruing only to the licensee.

The privilege conferred by a discharge license is that of using the public waters of the State for the discharge of wastes – a privilege which, by statute, a person does not possess without such a license. 38 M.R.S.A. § 413 (1964). This privilege was not created for the purpose of benefiting the licensee's land, but to protect the public waters. Neither is the benefit of the license intended to be incident to the possession of land. The Commission does not (nor should it) require, as a condition precedent to issuance of a discharge license, that the applicant possess an estate in the land from whence he proposes to discharge. *Stanton v. St. Joseph's College*, 233 A. 2d 718, (Me. 1967).

Therefore, when a licensee corporation relinquishes control of its discharge, either by virtue of being acquired by another corporation, or by selling the plant from which the discharge emanates, the license is extinguished. It cannot pass from the licensee corporation to the successor corporation by operation of law, because the grant of the license was intended only as a personal grant of privilege to the original licensee, and not as an equitable servitude appurtenant to the land. For the same reasons, any attempted assignment of the privilege conferred by the license is void. Restatement, *Property*, § 517 (1944); American Law of Property § 8.122 (1952).

CROSS REFERENCE

The Water and Air Environmental Improvement Commission has no power to transfer a discharge license from the initial licensee to a subsequent party. See 1959-60 Att'y Gen. Rep. 170.

ROBERT G. FULLER, JR.
Assistant Attorney General

May 28, 1968
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

SUBJECT: Insurance Premium Tax

SYLLABUS:

THE INSURANCE PREMIUM TAX IS BASED UPON PREMIUMS RECEIVED FROM POLICYHOLDERS AND DOES NOT INCLUDE REINSURANCE PREMIUMS.

FACTS:

Your memorandum dated March 28, 1968, sets forth the following problem: