STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

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:

"A question has arisen as to the proper method of determining the insurance premium tax in cases where an insurance company reinsures in another company. We understand this represents the situation where Company A collects the premium from the policyholder, and in turn pays a portion of the premium to Company B on account of the portion of the risk assumed by Company B.

The insurance premium tax is assessed with respect to 'all gross direct premiums' written on risks located or resident in this State. (See sections 2511 and 2513 of Title 36)."

QUESTION:

In the case of reinsurance, should the premium tax be based upon the total premium collected by Company A from the policyholder, or upon the net premium, after deducting the amount paid by Company A to Company B?

ANSWER:

The premium tax in the case of reinsurance should be based upon the total premium collected by Company A from the policyholder.

OPINION:

Insurance companies taxed pursuant to 36 M.R.S.A. §§ 2511-2522 upon "all gross direct premiums" written on risks located or resident in a state for insurance of life, annuity, fire, casualty and other risks.

There is no statutory definition of "gross direct premiums". That term is defined in *Best's Insurance Reports,* fire and casualty, 1966 as representing the aggregate amount of recorded originated premiums, other than reinsurance, issued.

Prior to 1939 the premium tax was determined according to the following statutory formula:

In determining the amount of tax due. . . there shall be deducted by each company from the full amount of premiums received, the amount of all return premiums on policies cancelled, the amount of all premiums paid to companies authorized to transact business in the State for reinsurances of risks in the State, and the tax shall be computed on the amount thus actually received by said companies or their agents as aforesaid." (R.S. 1930, c. 12, § 53).

In 1939 the foregoing section was amended:

In determining the amount of tax due . . . there shall be deducted by each company from the full amount of gross direct return premiums, the amount of all direct return premiums thereon, and all dividends paid to policy-holders on direct premiums, and the tax shall be computed by said companies or their agents as aforesaid. (P.L. 1939, c. 1 § 84).

The amendment added "gross direct" as modifiers of the term "premiums". Throughout the statute the reference to premium was changed to "direct" premium. Omitted as a deduction from the tax base were reinsurance premiums paid on risks in Maine.

One of the reasons for the 1939 amendment was a Supreme Court decision handed down the year before. *Connecticut General Co. v. Johnson,* 303 U.S. 77 (1938). In that case the court struck down a California tax on reinsurance contracts written in Connecticut with premiums paid there, even though upon risks originally insured in

California. California's tax was " 'upon the amount of the gross premiums received upon it's business done in this State, less return premiums and reinsurance in companies or associations authorized to do business in this State . . . ' " Ibid at 78. A deduction was allowed for reinsurance. The attempt was to apportion the tax between the companies accepting the risks. The Connecticut company involved was authorized to, and did, do business in California.

The court pointed out that the State did not have to redistribute the tax, but could have exacted the tax from the original insurers.

Although the Maine Legislature may have been attempting to include reinsurance premiums in the tax base by omitting the reinsurance deduction, at the same time it made the tax applicable to "direct" premiums. It appears to have been the intent of the Legislature to tax all premiums received from policyholders and to eliminate possible redistribution of the tax to reinsuring companies. In other words, a "direct" premium would be received from the policyholder, which would make unnecessary the provision for deduction of reinsurance. This result apparently is what the court in Johnson, supra, was suggesting to California.

A 1956 opinion of the Attorney General dealing with the insurance premium tax as it applies to annuities had occasion to discuss the legislative amendment of 1939 and suggested that "direct" refers to "insurance" and does not Include "reinsurance". Opinion of the Attorney General, August 1, 1956. See also Opinion of the Attorney General, January 6, 1966.

Therefore, premiums paid by one insurance company to another for reinsurance are not taxable under 36 M.R.S.A. §§ 2511-2522.

JAMES M. COHEN
Assistant Attorney General

May 29, 1968
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

SUBJECT: University of Maine – Application of Property Tax

SYLLABUS:

THE PROPERTY OF THE UNIVERSITY OF MAINE IS NOT EXEMPT FROM TAXATION AS PROPERTY OF THE STATE OF MAINE, BUT IS EXEMPT PURSUANT TO AND TO EXTENT OF EXEMPTION FOR LITERARY AND SCIENTIFIC INSTITUTIONS.

FACTS:

The planned construction of the University of Maine Book Store has raised a question as to the extent of property taxation exemption for the University.

QUESTIONS:

1. Whether property of the University of Maine is to be entitled to the same property tax exemption as "the property of the State of Maine" under 36 M.R.S.A. § 651 (B)?