

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

California. California's tax was "upon the amount of the gross premiums received upon its 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)?

2. If not, whether exemption must be found under 36 M.R.S.A. § 652 (B), applying to literary and scientific institutions.

ANSWERS:

1. No.
2. Yes.

REASONS:

Question 1.

“The property of the State of Maine is exempt from taxation” 36 M.R.S.A. § 651 (B).

“The University of Maine is declared to be an instrumentality and agency of the State for the purpose for which it was established and for which it has been managed and maintained” 20 M.R.S.A. § 2252.

Although the University is an instrumentality and agency of the State, the basic question to be answered for tax purposes is whether the property of the University is the property of the State of Maine.

One approach in attacking this question is to compare the University with the former State colleges. The University on the one hand was chartered by the Legislature as a corporation. The State colleges were set up directly by the State, title to the property being in the name of the State. No corporation or separate entity was created.

The distinction between the University and the State Colleges was discussed by the court in *Orono v. Sigma Alpha Epsilon Society*, 105 Me 214 (1909).

. . . the defendant . . . claims . . . an immunity from taxation on the ground that the University of Maine is a branch of the State government an instrumentality of the State itself and therefore its property is public property, no more subject to taxation by the Town of Orono than a jail, a court house or an insane hospital, and still further that the relation between the University and the Defendant are such that the University reaches to it. The doctrine of such immunity is everywhere acknowledged when the facts present an opposite case

The necessary facts, however, are lacking here. *The University of Maine*, while chartered by the State and fostered by it especially in recent years, *is not a branch of the State's educational system nor an agency nor an instrumentality of the State, but a corporation, a legal entity wholly separate and apart from the State.* The defendant seeks to class it as a State institution in the same sense as are the public schools or the normal schools, but such is not its legal status.

A comparison with the normal schools of the State is a fair one to illustrate the difference. The State maintains at the present time four normal schools the State itself took on a new form of public service and the educational system thus adopted became in fact an instrumentality of the State. No corporation was created, no separate entity was brought into existence, but the State simply put its own beneficent hand in a new direction, and the title to the property was taken in the name of the State.

. . . .

The difference between the relation of normal school and of the University of Maine to the State is paralleled (sic) in the difference between the various so called public or general hospitals of the State, and the two hospitals for the insane. The

former are doing a necessary and charitable work and are recipients of the bounty of the State, but the latter alone represent the State itself in its sovereign capacity along charitable lines. The former are apart from the State, the latter a part of the State. Actions at law would be against the former as against any corporation, but not against the latter as no suit lies against the sovereign power. *Supra*, at 219, 222. (Emphasis supplied).

Considering together the *Orono* case and 20 M.R.S.A. § 2252, which statute does not reverse the court's decision, the conclusion reached is that the University has been declared to be an agency of the State for educational purposes, but it is a legal entity wholly separate and apart from the State.

The University is not the State of Maine. Although it is a statutory agency for educational purposes, it does not possess the general attributes of a governmental agency of the State. Control of the University is in a corporate Board of Trustees, not State officials. It is not a department of State government for purposes of the State Retirement System. Opinion of the Attorney General, April 30, 1945.

Even as an agency for the purpose for which it was established, the University is not exempt under the provision of 36 M.R.S.A. § 651, (B), because its property is not the property of the State of Maine. Exemptions must be construed strictly. The University fails to fall within this exemption.

Question 2.

In order for the University to remain free from taxation, its property must be "owned and occupied or used solely for their own purposes . . ." as a literary and scientific institution. 36 M.R.S.A. § 652 (B). The University of Maine is a literary and scientific institution. *Orono v. Sigma Alpha Epsilon Society*. Op. Cit. at 217.

Therefore, like any other college or university in the State of Maine, exemption of property from taxation is dependent upon ownership and occupation or use solely for its own purposes, i.e. education. Whether property of a literary and scientific institution is exempt is dependent upon the facts presented to the taxing authority. In this case, it would be the determination of the assessors of the Town of *Orono*, subject, naturally, to review by the courts.

JAMES M. COHEN
Assistant Attorney General

June 5, 1968

Maynard Dolloff
Commissioner of Agriculture
State Office Building
Augusta, Maine

Dear Maynard:

You have asked for a statement of your authority relative to inspecting potatoes in freight cars at Northern Maine Junction. It is my understanding that there are presently a large number of such cars of potatoes which have been sitting at this location for several days and may perhaps continue there for an undetermined time. You, as Commissioner of Agriculture, believe that it is necessary to inspect these potatoes to determine if they are now within the grade indicated on the containers in which they rest.