

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

There are no Maine cases on point, but the statute of limitation cases cited supra do give aid to the conclusion reached. The authority of the State Tax Assessor to make an assessment upon failure of the taxpayer to file a return is granted by statute and is not limited by that statute.

JAMES M. COHEN
Assistant Attorney General

May 22, 1969
Mental Health and Corrections

William F. Kearns, Jr., Commissioner

Appointment of Director of Mental Health to Office of Director of Mental Retardation

SYLLABUS:

It is inconsistent with the intent and purpose of the Legislature to appoint the Director of Mental Health to the position of the Director of Mental Retardation, in addition to his current duties in the first capacity.

FACTS:

The 103rd Legislature enacted § 2061 and § 2062 of Title 34 of the Revised Statutes creating the Bureau of Mental Retardation and the position of Director of Mental Retardation, which statutes become effective on July 1, 1969. The Legislature did not, at that time, and has not since, funded the Bureau of Mental Retardation or the position of Director of Mental Retardation.

QUESTION:

Can the Director of Mental Health be appointed by the Commissioner of Mental Health and Corrections to the position of Director of Mental Retardation, which latter position would be in addition to the current function as the Director of Mental Health?

ANSWER:

No.

REASON:

Legislative intent appears clear here, that there be established two separate bureaus – the Bureau of Mental Health and the Bureau of Mental Retardation. It is also specifically provided that there shall be appointed two officials – the Director of Mental Health and the Director of Mental Retardation. It is our opinion that the Legislature expressed in these separate enactments its view that, the needs of the State demand two separate bureaus and two separate directors in the areas of mental health and mental retardation. The statute creating the position of Director of Mental Retardation requires that the appointment thereto be subject to the Personnel Law. It would, therefore, appear that the Commissioner could not just arbitrarily appoint the Director of Mental Health to this

office, and since funds are unavailable for the payment of the salary in connection with this position, it is impossible to make an appointment to this position, subject to the Personnel Law. It would appear that if the 104th Legislature does not fund the Bureau of Mental Retardation, including salary for the position of Director of Mental Retardation, the Commissioner of Mental Health and Corrections may appoint the Director of Mental Health as *acting* Director of Mental Retardation, since the Bureau of Mental Retardation becomes effective as of July 1, 1969, and will require some leadership. The actual appointment of a Director of Mental Retardation, in our view, will have to await funding by the Legislature.

COURTLAND D. PERRY
Assistant Attorney General

May 26, 1969
Bureau of Taxation

To: Ernest H. Johnson, State Tax Assessor

Subject: Application of sales and use tax to certain credit unions

SYLLABUS:

THE TELEPHONE WORKERS CREDIT UNION OF MAINE, THE RAILROAD WORKERS CREDIT UNION OF MAINE, AND THE GOVERNMENT EMPLOYEES CREDIT UNION OF MAINE ARE SUBJECT TO SALES AND USE TAX LAW OF MAINE.

FACTS:

Three credit unions: Telephone Workers Credit Union of Maine, Railroad Workers Credit Union of Maine, and Government Employees Credit Union of Maine have requested Sales and Use Tax exemptions.

Each credit union was created by private and special acts of the legislature. P. & S. L., 1921, c. 93; P. & S. S., 1927, c. 131; P. & S. L., 1931, c. 11.

The charters, as amended by P. L. 1961, c. 385, § § 16, 17, 18, similarly provide:

“The Revised Statutes of 1954, Chapter 55, Section 3 pertaining to credit union fees and assessments shall apply to said corporation. The aforesaid fees and assessments shall be in lieu of all other state and municipal taxes to said corporation and all the deposits of shareholders and investments and other property of the corporation shall be exempt from state or municipal taxation to the corporation, excepting real estate owned by the corporation and not held as collateral security, which may be taxed in the town or city in which the same is located. The deposits of shareholders shall be exempt from municipal taxation to shareholders.”

The public laws of credit unions provide:

“No part of chapters 241 to 251 shall be construed as repealing, modifying or amending the provisions of any private and special acts authorizing the organization and defining the purposes of corporations of similar nature.” 9 M.R.S.A. § 2605.

“Credit union shares of corporations organized under chapters 241 to 251 shall be tax exempted and no taxes or charges, except as otherwise provided, shall