

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

OPINION:

For purposes of the Land and Water Conservation Fund Act a public agency, as well as a political subdivision, may be eligible to receive federal land and water conservation funds from a State. The Bureau of Outdoor Recreation, U.S. Department of the Interior, defines a public agency as follows:

“PUBLIC AGENCY: Any non-private entity which serves a governmental purpose. The term includes but is not limited to State agencies, political subdivisions, and public authorities and commissions having governmental functions. For purposes of this manual, it does not include agencies of the Federal Government.” Bureau of Outdoor Recreation Manual. Grants-in-Aid Series. Part 600. General. Chapter 2 Definitions. 600.2.1 (Con.)

Thus, the project agreement by and between the State of Maine and one of its political subdivisions could be changed so that a public agency instead of a political subdivision was a party to the project agreement. It does not follow, however, that all public agencies could enter into such an agreement with the State of Maine, and more specifically a School Administrative District, even though it falls within the Bureau of Outdoor Recreation’s definition of a public agency, could not enter into a Land and Water Conservation Fund project agreement.

School Administrative Districts are established by Maine statute for educational purposes. Our Maine Legislature has set forth its policy in permitting the establishment of School Administrative Districts by the following statutory language:

“Declaration of policy. It is declared to be the policy of the State to encourage the development of school administrative units of sufficient size to provide a more equalized educational opportunity for pupils, to establish satisfactory school programs and to achieve a greater uniformity of school tax rates among the School Administrative Districts and a more effective use of the public funds expended for the support of public schools.” 20 M.R.S.A. § 211.

The provisions of the Maine Revised Statutes relating to School Administrative Districts do not expressly, or by implication, authorize School Administrative Districts to operate and maintain outdoor recreational facilities for the general public.

JEROME S. MATUS
Assistant Attorney General

July 30, 1969

To: Ernest H. Johnson, State Tax Assessor, Bureau of Taxation

Subject: Corporate Franchise Tax, Title 36 M.R.S.A. Sections 2401 Through 2407

SYLLABUS:

LOAN COMPANIES AND INDUSTRIAL BANKS ORGANIZED PURSUANT TO TITLE 9 ARE SUBJECT TO CORPORATE FRANCHISE TAX.

FACTS:

Title 9 of the Revised Statutes permits the organization of certain corporations with fixed capital which engage in banking and financial business, such as trust companies,

industrial banks and loan companies.

A corporate franchise tax is imposed upon “every corporation incorporated under the laws of this State, having a fixed capital . . .” 36 M.R.S.A. §2401. “The State Tax Assessor shall . . . assess the tax . . . upon the authorized capital stock . . .” 36 M.R.S.A. § 2402. The tax is determined with respect to the amount of the capitalization.

QUESTION:

Whether financial institutions organized as corporations with capital stock under Title 9 of the Revised Statutes are subject to the corporate franchise tax?

ANSWER:

Yes, (except trust companies and national banks).

REASONS:

Certain banking and financial institutions organized under Title 9 are not subject to the corporate franchise tax because they are corporations without fixed capital. These are savings banks, savings and loan associations, and credit unions.

Trust companies and national banks are exempt from the corporate franchise tax as a result of 36 M.R.S.A. §4752 and *Opinion of the Attorney General*, August 17, 1966. These institutions pay a bank stock tax.

Taxation is the rule and exemption the exception, *Inhabitants of Town of Owls Head v. Dodge*, 151 Me. 473; *In re Camden Shipbuilding Co.*, 227 F. Supp. 751; and no specific exemption exists in the statutes with respect to corporations with fixed capital organized under Title 9. Corporations having a fixed capital are subject to the franchise tax imposed by 36 M.R.S.A. § §2401, 2402. Therefore, industrial banks and loan companies are liable for the corporate franchise tax in the same manner as any other corporation with fixed capital.

JAMES M. COHEN
Assistant Attorney General

August 5, 1969
Mental Health and Corrections
(Bureau of Mental Health)

William E. Schumacher, M.D., Director

Construction of Aroostook Mental Retardation Facility

SYLLABUS:

Under P&SL 1967, c. 222, the Department of Mental Health and Corrections has responsibility for the construction of the Aroostook Mental Retardation Facility, and can not share such responsibility with, or delegate it to, a private agency. Land upon which such facility is built shall be owned by the State of Maine and not leased.

FACTS:

The 103rd Legislature by P&SL 1967, c. 222, ratified by the voters, authorized the