

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

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

Department of Mental Health and Corrections as follows:

“Sec. 1. Residential facility for mentally retarded. The Department of Mental Health and Corrections shall construct a residential facility for retarded children in Aroostook County, utilizing any available building funds and matching federal funds. The cost of such construction, including any expense incurred in financing thereof, shall be taken and appropriated from the proceeds of bonds issued under authority of this Act. Expenses of financing shall include the interest payments required on the bonds for the purposes of such construction.”

The Commissioner of Mental Health and Corrections and the Director of Mental Health have met with representatives of the Central Aroostook Association for the Retarded, and have discussed the responsibility of the Department of Mental Health and Corrections with respect to construction of the Aroostook Facility for the Retarded and whether such facility may be constructed upon land leased by the Department of Mental Health and Corrections, or upon land owned by the Central Aroostook Association, also under a lease arrangement.

QUESTIONS:

1. Can the Department make arrangements with the Central Aroostook Association for the Retarded to have that association construct the building in accordance with a mutually agreeable plan for construction?
2. May the Department of Mental Health and Corrections lease land for this construction, or utilize land which is owned by the Central Aroostook Association, and construct on that leased land?

ANSWERS:

1. No.
2. No.

REASONS:

The Legislature has clearly vested the Department of Mental Health and Corrections, only, with authority to construct the facility in question. No authorization is found in the Act for the sharing or delegating of such responsibility. Further, the Bureau of Public Improvements, under the General Law, has the responsibility with respect to supervision of construction of State buildings, and any contracts with respect to the construction of the building, except contracts for professional, architectural and engineering services are required to be put out to competitive bids under Title 5, M.R.S.A. § 1743, which mandatory element of construction control would not be adhered to, where the Department of Mental Health and Corrections to permit a private agency to build the building using State funds. We are, therefore, of the opinion that the Department of Mental Health and Corrections, under the Act and within the framework of the General Law, relating to State building construction, has the responsibility for constructing the Aroostook Facility for the Mentally Retarded and can not share with, or delegate to a private agency, such responsibility.

We find no authority for the construction of a State building on land other than land to which the State has title. Further, we find that the Aroostook Facility for the Mentally Retarded will come under the control of the Department of Mental Health and

Corrections, including its grounds and property, under the following language of Title 34, M.R.S.A. §1:

“The Department of Mental Health and Corrections . . . shall have general supervision, management and control of the . . . grounds, buildings and property, . . . of all of the following state institutions . . . and such other charitable and correctional state institutions as may be created from time to time . . .”

We find implicit in the above language the legislative intent that all property upon which institutions, under the Department of Mental Health and Corrections, are located be property owned by the State, since such ownership must exist in order for the Legislature to delegate the supervision and control of such property, clearly expressed in the Statute. Were the building in question to be built upon leased land any control which the department might have over the grounds and property would arise from the lease. Such contractually determined control was not intended by the Legislature.

COURTLAND D. PERRY
Assistant Attorney General

August 6, 1969
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

SUBJECT: Insurance Premium Taxes

SYLLABUS:

THE RECEIPT OF PREMIUMS OUT OF STATE BY A FOREIGN INSURANCE COMPANY ON RISKS LOCATED IN MAINE, WHICH COMPANY HAS WITHDRAWN FROM THIS STATE, CONSTITUTES THE DOING OF BUSINESS PURSUANT TO 36 M.R.S.A. § 2513 SO THAT AN INSURANCE PREMIUM TAX IS PAYABLE BY SUCH COMPANY.

FACTS:

A foreign insurance company no longer solicits new insurance or collects premiums in this State. Its license, issued by the Insurance Department and which authorized the company to transact business in Maine, expired on July 1, 1968 and it has not been renewed.

The company has no offices or agents in the State of Maine. However, the company continues to collect and receive premiums out-of-state upon policies which were written prior to its withdrawal from the State of Maine. It is assumed that the company sends premium reminder notices to the insureds on a regular basis. Also, it is assumed that the company will, from time to time, be compelled to investigate claims pursuant to policies issued to insureds residing in Maine and that litigation in Maine courts, in connection with these policies, may arise from time to time.

The insurance premium tax is administered under sections 2511 through 2522 of Title 36 of the Revised Statutes. Imposition of the tax is provided in 36 M.R.S.A. § 2513:

“Every insurance company or association which *does business or collects premiums* or assessments including annuity considerations *in the State* . . . shall, for the privilege of doing business in the State, and in addition to any other taxes imposed for such privilege annually pay a tax upon all gross direct premiums