STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

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THE RECEIPT OF PREMIUMS OUT OF STATE BY A FOREIGN INSURANCE COMPANY ON RISKS LOCATED IN MAINE, WHICH COMPANY HAS WITHDRAWN FROM THIS STATE, CONSTITUTES THE DOING OF BUSINESS PURSUANT TO 36 M.R.S.A. § 2513 SO THAT AN INSURANCE PREMIUM TAX IS PAYABLE BY SUCH COMPANY.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

including annuity considerations, whether in cash or otherwise, on contracts written on risks located or resident in the State for insurance of life, annuity, fire, casualty and other risks at the rate of 2% a year. (Emphasis supplied).

QUESTION:

Does the receipt of premiums out of state by a foreign insurance company on risks located in Maine, which company has withdrawn from this State, constitute the doing of business so that an insurance premium tax is payable to the State?

ANSWER:

Yes.

REASONS:

Section 2513 levies a premium tax upon any insurance company which "does business or collects premiums . . . in the State . . . for the privilege of doing business in the State." This is a privilege tax. For the assessment to be valid the insurance company must be doing business in the State or collecting premiums in the State.

If the company is doing business in the State of Maine, it may be subjected to taxation. The question for decision becomes whether the receipt of premiums outside the State of Maine by a foreign insurance company, on risks located in Maine, which company has withdrawn from this State, constitutes the doing of business.

The Supreme Court of California in *People v. United National Life Insurance Co., et als.* 58 Cal. Rptr. 599 (1967), in part dealt with the question of whether or not a mail order insurance company, for purposes of regulation, was doing business within the State of California. The court stated at page 690:

> "In all instances payment of premiums is made by California residents from funds or bank accounts located in California. It is clear that any claims made under the policies will most likely be investigated in this state and that any litigation in connection with the policies will undoubtedly be commenced in California courts. It is also forseeable that should defendants for any reason fail to perform their obligations in accordance with the policies, California might be called upon to provide assistance for the persons within its borders who were intended to be financially assisted by the benefits under the policies.
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> "The main aspects of their insurance transactions are in this State; and to say that they are not doing business here is to completely ignore the facts of life and reality."

The language of the Court in the decision cited above is relevant to the facts and the question involved here. Not only did the company which withdrew from Maine, at one time actively solicit insurance by registered agents in Maine, but it is assumed that it now continues to send premium reminder notices to the insureds, and if necessary, the company will investigate claims and be involved, either as plaintiff or defendant, in litigation in Maine courts in connection with these policies.

There are here the requisite minimal contacts with the State of Maine which constitute the "doing of business" by a company which has withdrawn from the State, but continues to collect premiums from insureds located in this State. The *Opinion of the Attorney General,* March 3, 1969, held that, certain minimal contacts such as

solicitation, offer and acceptance and the payment of premiums by mail, without more, constituted the "doing of business" for the purpose of jurisdiction to regulate.

Further, the *Opinion of the Attorney General,* May 19, 1969, which concerned the effect of 36 M.R.S.A. §2513 as to the taxability of mail order insurance companies, held:

> "When the insured risk is located or resident in Maine and there are some business contacts with this state the insurance company is subject to the taxing jurisdiction of Maine."

Surely, for purposes of the insurance premium tax, this company is maintaining "some business contacts with this State".

We are aware of the United States Supreme Court's decision in *Provident Savings Assn. v. Kentucky,* 239 U.S. 103 (1915) where it was held that, on similar facts, that the continued collection of premiums by an insurance company, after withdrawal from the State, did not constitute the "doing of business." It is believed that the United States Supreme Court, if presented the question raised by this opinion today would follow and expand upon the California Court's reasoning in *People v. United National Life Insurance Co.,* supra. The findings of the California Court were appealed to the Supreme Court of the United States. It was dismissed for "want of a substantial Federal Question." *United National Life Insurance Company, et als. v. California,* 389 U.S. 330 (December 11, 1967).

It should be noted that pursuant to Title 24-A M.R.S.A. §405 of the recently enacted Maine Insurance Code, to be effective January 1, 1970 insurance companies, which formerly held Certificates of Authority and which continue to collect new premiums resulting from their former authorized operations in Maine, must obtain a Certificate of Authority pursuant to §404. Such companies will be specifically subject to regulation by the State.

It is not necessary to here decide whether or not this company collects premiums "in the State", as a basis for the imposition of a premium tax, inasmuch as this company is "doing business" in Maine; and it is this latter ground upon which this opinion is rested.

WENDELL R. DAVIDSON
Assistant Attorney General

August 11, 1969
Inland Fisheries and Game

Maynard F. Marsh, Chief Warden

Hunting, etc. by Indians, P.L. 1969, Ch. 338

SYLLABUS:

An Indian may not, under P.L. 1969, Ch. 338, take a deer on reservation lands and sell it.

FACTS:

P.L., 1969, Chapter 338 amended 12 M.R.S.A. §2301, sub- §3, by adding a new paragraph A which provides that nothing in the fish and game laws "shall be construed to encroach upon the right of said Indians to take wild life for their own sustenance on their own reservation lands."