

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

*ANSWER:*

No.

*REASON:*

1 M.R.S.A. § 403 states that “ALL public proceedings shall be open to the public, and *all persons* shall be permitted to attend any meetings of these bodies or agencies . . . .” (Emphasis supplied.) Section 402 defines “public proceedings” as “The transactions of any functions affecting *any* or all citizens of the State by any administrative or legislative body of the State . . . .” (Emphasis supplied.)

The Governor and Council, sitting as a pardon board, are an administrative body, as opposed to a legislative or judicial body. As pardon hearings affect the citizens of this State, and as these proceedings are administrative, they fall within the purview of 1 M.R.S.A. § 401 et seq.

1 M.R.S.A. § 403 states that all public proceedings “shall be open to the public, and *all persons* shall be permitted to attend . . . .” (Emphasis supplied.) Admission of the press only would not satisfy the stated provision. Members of the press do not constitute the general public as clearly intended by this section.

JAMES S. ERWIN  
Attorney General

October 6, 1969

Honorable Sam A. R. Albair  
Executive Council  
State House  
Augusta, Maine

Re: Purchase of Executive Aircraft

Dear Councillor Albair:

*SYLLABUS:*

The Aeronautical Fund may not be used to pay for an aircraft for the general use of the Governor and state agencies having no aircraft.

*FACTS:*

The State seeks to purchase an aircraft for the general use of the Governor and state agencies having no aircraft. A Council Order was presented to and passed by the Council and approved by the Governor on September 30, 1969. The intent of the order was to pay for such an aircraft from the Aeronautical Fund. The order was defective. See Opinion of the Attorney General, October 1, 1969.

*QUESTION:*

May the Aeronautical Fund be used to purchase an aircraft for the use of the Governor and state agencies having no aircraft?

*ANSWER:*

No.

*OPINION:*

It must be pointed out that this opinion is written as of September 30, 1969. Beginning October 1, 1969 the Aeronautical Fund exists for the same purposes as prior to that date but only until it is exhausted. The revenues which formerly went into that Fund go into the General Fund as of October 1, 1969.

The Aeronautical Fund is governed by 36 M.R.S.A. § 2912.

“Every distributor of internal combustion fuels shall keep a record of sales of such fuels as are sold to be used for aeronautical purposes and shall render a report thereof as provided in section 2906. To the Aeronautical Fund, as heretofore established, shall be credited the tax received by the State on internal combustion engine fuels which are sold to be used for aeronautical purposes. The necessary expenses of the collection of the tax on such fuels, to be used for aeronautical purposes, shall be deducted. All fees from the registration of aircraft and pilots as provided for by law and all fines, penalties and costs as imposed under the law relating to aircraft and pilots shall accrue to the Aeronautical Fund. Any unexpended balance from the above apportionments shall not lapse but shall be carried forward to the same fund for the next fiscal year and be available for such uses as indicated in this section. The Aeronautics Commission is authorized and directed to expend so much of the Aeronautical Fund as may be necessary for the purposes of carrying out the duties imposed upon it by law and to expend any unexpended balance in such fund toward the development and promotion of aviation, and to assist in construction, repair and the maintenance of, and the removal of snow from, municipal, state, county and federal airports in this State, and assist in the construction and maintenance of a system of air marking, in such manner and in such amounts as it shall deem equitable. Such assistance may likewise be given for snow removal on a state, federal, county or municipal owned airport used by a commercial air carrier of passengers and freight operating on a regular schedule, this assistance being extended to such carrier where the state, federal, county or municipal owner does not obligate itself and the airport is open to itinerant planes. The amounts in said fund are appropriated for the purposes set forth.”

An analysis of this section as it relates to uses of the Fund reveals the following uses are permitted:

1. Necessary expenses of collection of gasoline tax.
2. Necessary for purposes of carrying out Commission duties.
3. Development and promotion of aviation. See also 6 M.R.S.A. § 2, subsection 2.
4. To assist in construction, repair and maintenance of municipal, state, county and federal airports in Maine.
5. To assist in removal of snow from airports listed in 4.
6. To assist in the construction and maintenance of a system of air marking.

It is obvious the items 1, 4, 5 and 6 would not be applicable to the question asked. If the Fund may be used for the purpose in the instant case, it must be by virtue of either 2 or 3.

The use of a state-owned aircraft instead of a commercial plane by the Governor or personnel of state agencies could hardly come under the heading of development and promotion of aviation.

The remaining item is that of being necessary for the purposes of carrying out the duties of the Aeronautic Commission. Note 6 M.R.S.A. § 2, wherein are set out general duties, (1) general progress in aviation; (2) development of aviation; (3) effecting uniform regulations throughout the state; (4) providing protection and promotion of public interest and safety in the operation of aircraft. More specific language is found in 6 M.R.S.A. § 42, but it all relates back to § 2. The Commission has responsibility for care and supervision of state-owned planes, except those owned or operated by Inland Fisheries and Game, Sea and Shore Fisheries or Forestry.

A thorough analysis of Title 6 reveals no language that can be construed as authorizing the purchase from the Aeronautical Fund of aircraft for use of the Governor and state agencies having no aircraft.

Very truly yours,  
GEORGE C. WEST  
Deputy Attorney General

October 15, 1969  
Bureau of Taxation

Thomas S. Squires, Asst. Director,  
Sales & Use Tax Division

Tax Status Under Sales and Use Tax Law of Pre-primary Non-profit Educational Institutions

*SYLLABUS:*

A PRE-PRIMARY NON-PROFIT EDUCATIONAL INSTITUTION DOES NOT QUALIFY FOR SALES AND USE TAX EXEMPTION AFFORDED "SCHOOLS" UNDER 36 M.R.S.A. § 1760 SUB. 16.

*FACTS:*

A pre-primary non-profit educational institution prepares children for entrance to primary schools. The assumption is made that the institution meets all other qualifications for a school. A ruling has been requested by the institution's Secretary-Treasurer to the effect that sales to that educational institution be tax exempt and that a certificate of exemption be issued.

*QUESTION:*

Are sales to pre-primary non-profit educational institutions tax exempt under the State of Maine Sales and Use Tax Law?

*ANSWER:*

No.

*REASONS:*

Sales to schools are exempted from Sales and Use Tax Law 36 M.R.S.A. § 1760 Sub. 16. The cited sub-section includes a definition of schools which reads as follows:

“ . . . 'Schools' mean incorporated nonstock educational institutions, including