

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

FACTS:

The Department of Inland Fisheries and Game has for a long period of time maintained a large cash balance of special revenue funds on deposit with the State Treasurer which has been invested by the Treasurer in accordance with law and has earned a sizeable amount of interest each year. Under the provisions of 5 M.R.S.A. § 135, this interest has been credited to the General Fund of the State. The department has been advised that, effective January 1, 1970, it will be charged rent for the space used by it in the State Office Building. It had previously been understood that the above-referred-to interest, being so credited, served as a substitute for the rental fee for such space.

QUESTION:

May the interest earned on department funds deposited with the Treasurer and invested by him in accordance with 5 M.R.S.A. § 135 be used by the department to pay for rental of office space?

ANSWER:

No.

REASON:

Moneys received by the department are for the use of the department and are deposited with the State Treasurer in a special revenue account. From these receipts the Legislature, by P. & S. L. 1969, Ch. 143, has allocated certain amounts for departmental operations which may include rent of office space.

When, however, there are excess moneys in the Treasury not needed to meet current obligations, 5 M.R.S.A. § 135 provides that the Treasurer may invest such moneys and that "interest earned on such investments shall be credited to the respective funds, except that interest earned on investments of special revenue funds shall be credited to the General Fund of the State."

It follows from the above that while moneys received by the department may be used in payment of rent for office space, interest earned on funds of the department invested by the Treasurer in accordance with 5 M.R.S.A. § 135, must be credited to the General Fund and may not be used in payment of such rent.

LEON V. WALKER, JR.
Assistant Attorney General

January 9, 1970
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

National Banks

SYLLABUS:

IN VIEW OF H.R. 7491, MAINE IS PRECLUDED FROM IMPOSING A CORPORATE INCOME TAX AGAINST NATIONAL BANKS SINCE MAINE NOW LEVIES A BANK STOCK TAX AGAINST THEIR CAPITAL STOCK. FURTHER, THE

REPEAL OF THE BANK STOCK TAX WOULD NOT AUTOMATICALLY SUBJECT NATIONAL BANKS TO THE MAINE CORPORATE INCOME TAX LAW. AFFIRMATIVE LEGISLATIVE ACTION IS NECESSARY.

FACTS:

On December 24, 1969 H.R. 7491 was enacted into law. The intent of this federal legislation was to liberalize state taxation of national banks by amending 12 U.S.C.A. § 548. The pertinent parts of § 548 and the amendments thereto are as follows:

“The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with: 1. (a) The imposition by any State of any one of the above four forms of taxation *shall be in lieu of the others*, except as hereinafter provided in subdivision (c) of this clause.” (emphasis supplied) 12 U.S.C.A. § 548.

“ . . . That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations.” 12 U.S.C.A. § 548 (c).

“Section 5219 of the Revised Statutes (12 U.S.C. 548) is amended by adding at the end thereof the following: In addition to the other methods of taxation authorized by the foregoing provisions of this section and subject to the limitations and restrictions specifically set forth in such provisions, a State or political subdivision thereof may impose any tax which is imposed generally on a nondiscriminatory basis throughout the jurisdiction of such State or political subdivision (other than a tax on intangible personal property) on a national bank having its principal office within such State in the same manner and to the same extent as such tax is imposed on a bank organized and existing under the laws of such State.” H.R. 7491 § 1 (a) (5) (a).

“The amendment made by subsection (a) of this section, shall be effective from the date of enactment of this Act until the effective date of the amendment made by section 2(a) of this Act.” H.R. 7491 § 1 (b).

“Except as provided in subsection (b) of this section, prior to January 1, 1972, no tax may be imposed on any class of banks by or under authority of any State legislation in effect prior to the enactment of this Act unless the imposition of the tax is authorized by affirmative action of the State legislature after the enactment of this Act.” H.R. 7491 § 3 (a) (2).

Pursuant to 36 M.R.S.A. § 4751-4754, Maine now levies a Bank Stock Tax against the capital stock of National Banks.

QUESTIONS:

1. Since Maine now levies a Bank Stock Tax against the capital stock of national banks, does this preclude the imposition of the Maine corporate income tax against

national banks, in view of the liberalization of the federal statute?

2. If the answer to question No. 1 is in the affirmative, then would the repeal of the Bank Stock Tax automatically subject national banks to the Maine Corporate Income Tax Law?

ANSWERS:

1. Yes.
2. No.

REASONS:

1. Section 1 of H.R. 7491 permits, for the period between the date of enactment and January 1, 1972, the imposition of any new tax on national banks. However, the "limitations and restrictions" which are specifically set forth in 12 U.S.C.A. § 548 (1) are incorporated by reference into section 1 of H.R. 7491. Thus, a choice must be made between the Bank Stock Tax and the Maine corporate income tax. It should be noted that § 548 (c) permits Maine to impose an individual income tax, in addition to the corporate income tax, upon dividends received by Maine shareholders from national banks.

2. The repeal of the Bank Stock Tax would not automatically subject National Banks to the Maine Corporate Income tax. Section 3 (a) (2) of H.R. 7491 is a saving provision which permits a legislature, by affirmative action, to impose a new tax, ie: the Maine corporate income tax. However, the Bank Stock Tax would have to be repealed. Section 3 (a) (2) states in part:

" . . . prior to January 1, 1972, no tax may be imposed on any class of banks by or under authority of any state legislation in effect prior to the enactment of this Act unless the imposition of the tax is authorized by affirmative action of the State legislature after the enactment of this Act."

WENDELL R. DAVIDSON
Assistant Attorney General

January 12, 1970
Environmental Improvement Comm.

William R. Adams, Director

License requirements – private outfalls; municipal sewers

SYLLABUS:

A municipality need not apply for a waste discharge license under 38 M.R.S.A. § 413 where it proposes only to collect and discharge, through a municipal sewer, sewage in like quantity as was previously discharged through privately owned outfalls. 1961-62 Ops. Attorney General 162 reaffirmed.

FACTS:

For an unspecified number of years prior to 1965, but at least as far back as September 1, 1959 sewage from a number of buildings was discharged through six