

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

stationed in any "garrison, barracks or military place" in a municipality. It is significant that civilians living thereon are not so excluded, and we conclude that it has never been the intention of the people of this State to deprive these individuals of the right to vote, in either local or State elections.

The opinions of this office dated September 7, 1956 and July 1, 1958, are no longer applicable to the present situation with respect to Federal reservations within this State; and civilian residents thereof who are otherwise qualified under State law for registration and enrollment to vote may establish their voting residence thereon and be registered and enrolled in the municipality within whose physical boundaries they so reside.

JAMES S. ERWIN
Attorney General

February 6, 1970
Bureau of Taxation

Ernest H. Johnson, State Tax Assessor

Taxability of Distribution of Capital Assets of Corporation Under Real Estate Transfers Law – 36 M.R.S.A. §§ 4651-4654

SYLLABUS:

A DISTRIBUTION OF CAPITAL ASSETS IN THE FORM OF REAL PROPERTY REPRESENTED BY DEEDS FROM THE CORPORATION TO THE STOCKHOLDERS IS NOT SUBJECT TO THE TAX ON REAL ESTATE TRANSFERS. (36 M.R.S.A. §§ 4651-4654).

FACTS:

A corporation distributes to its 5 shareholders capital assets in the form of real property represented by deeds from the corporation to the individual shareholders. The value of the real property distributed was appraised by competent appraisers and the distributees either paid or received in cash the difference between the distributive share of the capital assets and the appraised value of the property deeded to them as capital distributions. In some instances there was no difference between the distributive share and the appraised value of the property deeded. In one instance the real property received by a distributee was appraised at \$2,000 more than the distributive share. The distributee paid the corporation \$2,000 to offset this additional value.

QUESTION:

Are any of these transactions taxable under the Real Estate Transfers Law (36 M.R.S.A. §§ 4651-4654)?

ANSWER:

No.

REASONS:

The Real Estate Transfers Law provides in pertinent part:

“There is imposed, on each deed, instrument or writing by which any lands, tenements or other realty *sold . . . a tax . . .*” (Emphasis supplied) 36 M.R.S.A. § 4651.

We read the above statutory language to mean that in order for the real estate transfer tax to be effective there must be a sale of lands, tenements or other realty. The facts furnished by the attorney for the corporation clearly indicate there was no sale. The deeds were given as a distribution of capital assets. The fact that in one instance the value of the property distributed was \$2,000 more than the distributive share of one shareholder was offset by the shareholder replacing \$2,000 in the capital account of the corporation. In no instance was there a sale by the corporation and therefore no tax is imposed under the Real Estate Transfers Law.

JEROME S. MATUS
Assistant Attorney General

February 23, 1970
Real Estate Commission

Leo Carignan, Executive Secretary

SYLLABUS:

An auctioneer, engaged in the sale of real estate in Maine for the Small Business Administration must be licensed by the Maine State Real Estate Commission.

FACTS:

The Small Business Administration, a federal agency, has engaged a private auctioneer in this State to sell real estate for it. The auctioneer so engaged is not licensed by this State as a real estate broker or salesman.

QUESTION:

Is an auctioneer under the above circumstances required to be licensed in this State?

ANSWER:

Yes.

OPINION:

In general, any person, firm, partnership, association or corporation that offers real estate for sale for others, as a partial or whole vocation, falls within the definition as a real estate broker. 32 M.R.S.A. § 4001.

Since auctioning real estate has been classified by Opinion of the Attorney General, dated June 29, 1956, as an activity requiring a license, the subject auctioneer must meet this requirement unless there are special circumstances that would remove him from