

MAINE STATE LEGISLATURE

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W. L. J. E. B.

December 16, 1975

Norman P. Ledew, Director

Property Tax Division

Jerome S. Matus, Asst. Atty. Gen.

Bureau of Taxation

Real Estate Transfer Law

FACTS:

The Director of the Property Tax Division of the Bureau of Taxation has received several inquires as to whether written instruments conveying easements are subject to the real estate transfer tax and to the requirement of the real estate transfer tax law for a declaration of value form to accompany the recording of a deed.

QUESTION & ANSWER:

Is a written instrument conveying easement rights a "Deed" as defined in 36 M.R.S.A. §4641 sub§2 thus making its recording subject to the real estate transfer tax and requiring the written instrument conveying the easement when offered for recording to be accompanied by a declaration of value form? No.

REASONS:

36 M.R.S.A. §4641-A of the Real Estate Transfer Tax Law, 36 M.R.S.A. §4641 through 4641-M as enacted by the 1975 P.L. Me. C. 572 and effective October 1, 1975, provides that

"There is imposed a tax upon the privilege of transferring title to real property at the rate of \$.55 for each \$500 or fractional part thereof, of consideration therefor. The grantor shall be liable for payment of said tax."

Thus it is clear that a tax is imposed upon the privilege of transferring title to real property. If there is no transfer of title no tax is imposed. The definition of Deed in the Real Estate Transfer Tax Law is consistent with the concept of transfer of title.

"'Deed' means a written instrument whereby the grantor conveys to the grantee title in whole or in part to real property." 36 M.R.S.A. §4641 sub§2

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A leading legal encyclopedia describes the nature and characteristic of an easement in pertinent part as follows:

"An easement is always distinct from the right to occupy and enjoy the land itself. It gives no title to the land on which it is imposed, and confers no right to participate in the profits arising therefrom. It is not an estate in land, nor is it "land" itself. An easement is, however, property or an interest in land. It is an incorporeal right or hereditament to which corporeal property is rendered subject. And it may be vested right within the meaning of constitutional guaranties, including the prohibition against taking property without just compensation." Emphasis supplied.
25 Am. Jur. 2d §2 Easements and Licenses p. 417 & 418

The Supreme Judicial Court of the State of Maine has stated that "An easement is an incorporeal right and something entirely different from the ownership of the fee." Page v. Bourgon 138 Me. 113 c. 116 (1941). The Supreme Court of New Hampshire also recognizes an easement does not grant title to real estate. Gower v. Swain 10 A2d 249 (1941).

Declarations of value are only required when deeds are offered for recording. 36 M.R.S.A. §4641-D. Since a written easement instrument offered for recording is not a deed, as there is no transfer of title, no real estate transfer tax can be imposed, and there is no requirement for a declaration of value.

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JSM:mb