

MAINE STATE LEGISLATURE

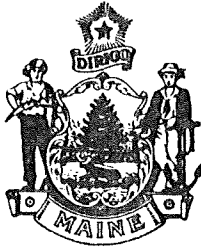
The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



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

81-73

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

September 4, 1981

Mrs. Mugnette C. Thompson
Registry of Deeds
Androscoggin County
P. O. Box 70
Auburn, Maine 04210

Dear Mrs. Thompson:

This will respond to your letter of July 22, 1981 in which you seek our advice as to the recording fees which the registers of deeds are to receive under newly enacted legislation to become effective on September 18, 1981.

Your first inquiry relates to the fee which the registers of deeds are entitled to receive pursuant to 18-A M.R.S.A. §1-602(1), as amended by Chapter 279, §10 of the Public Laws of 1981. Under present law, 18-A M.R.S.A. §1-602(1) provides as follows:

"The register of probate shall receive the following fees for filing or certifying documents:

(1) For making and certifying to the register of deeds copies of devises of real estate, abstracts of petitions for appointment of a personal representative or for an elective share, and any other document for which such certification is required, \$6, except as otherwise expressly provided by statute. The fee shall be paid by the personal representative, petitioner or other person filing the document to be certified when the copy of the devise or abstracts are made. Of this fee, \$2 shall be paid by the register of probate to the register of deeds when the certified copy is furnished to him. (emphasis added).

The last sentence of section 1-602(1), that which is underlined above, has been repealed by virtue of section 10 of Chapter 279

Mrs. Muguette C. Thompson
September 4, 1981
Page 2

of the Public Laws of 1981, effective September 18, 1981, and the following enacted in its place:

"The register of deeds shall receive the fee set in Title 33, section 751 when the certified copy is furnished to him."

Thus, it is clear that by operation of P.L. 1981, c.279, §10, the fee which the register of deeds is to receive for recording the documents specified in 18-A M.R.S.A. §1-602(1), will be governed by 33 M.R.S.A. §751. What is not as clear, however, is which provision of section 751 controls this inquiry. Section 751 begins with an introductory paragraph which provides:

"Except as provided in Title 11, registers of deeds shall receive \$5 for the first record page and \$1 for each additional record page of each instrument or document presented for recording, unless a different fee is established as follows:"

Following the introductory paragraph of section 751, there are numerous subsections which specify the fees which the register of deeds is to receive for recording particular types of documents or instruments. It does not appear that any of the documents referred to in 18-A M.R.S.A. §1-602(1), as amended by P.L. 1981, c.279, §10, are specifically covered by any of the subsections of 33 M.R.S.A. §751. However, subsection 1 of 33 M.R.S.A. §751 provides that the register of deeds shall receive "the sum of \$5 for the first record page and \$1 for each additional record page or portion thereof," for "receiving, recording and indexing any deed or mortgage or any other instrument which is entitled to be recorded and for which a specific fee is not set forth in this section or in any other section...."¹ (emphasis added).

Thus, it appears that both the introductory paragraph and subsection 1 of 33 M.R.S.A. §751 set forth a general recording fee for documents and instruments, unless a specific fee is otherwise provided by law. This, of course, would pose no problem

1. The last sentence of 33 M.R.S.A. §751(1) also provides that "[i]n addition, if more than 4 names are to be indexed, a fee of 25¢ shall be paid for each additional name, counting all grantors and grantees."

Mrs. Muguette C. Thompson
September 4, 1981
Page 3

if both statutory provisions provided for the same general recording fee, which they have since 1977. See P.L. 1977, c.145, §1. Effective September 18, 1981, however, the general fee specified in subsection 1 of 33 M.R.S.A. §751 will be increased to "\$6 for the first record page and \$2 for each additional record page or portion thereof." See P.L. 1981, c.279, §24. On the other hand, while virtually all of the recording fees specified in the other subsections of 33 M.R.S.A. §751 were increased by the 110th Legislature during its First Regular Session, the fee established in the introductory paragraph of that statute was not. See P.L. 1981, c.279, §§24-31. In view of this apparent conflict between the provisions of the introductory paragraph and subsection 1 of 33 M.R.S.A. §751, as amended by P.L. 1981, c.279, §24, you have asked what general recording fee registers of deeds should charge, effective September 18, 1981, for those documents and instruments for which no specific fee is otherwise provided by law.

At the outset, we must observe that, based upon the plain language of 33 M.R.S.A. §751, we cannot conceive of any circumstances in which a document which falls within the scope of the introductory paragraph of section 751 would not also fall within the scope of subsection 1 of that statute, and vice versa. It is our understanding that all documents received by the register of deeds are recorded and indexed. Moreover, in an effort to respond to your inquiry, we have attempted to ascertain whether the Legislature had any purpose in mind when it provided for two general recording fees in 33 M.R.S.A. §751. Unfortunately, our review of the legislative history of section 751 provides little guidance on this issue, except to confirm our belief that when the Legislature specified a general recording fee in the introductory paragraph of section 751, it merely duplicated the one already provided in subsection 1. Consequently, when the amendment to 33 M.R.S.A. §751(1) becomes effective on September 18, 1981, we believe that a direct conflict will exist between subsection 1 and the introductory paragraph of section 751.

Prior to 1977, it seems clear that the general recording fee for documents and instruments for which a specific fee was not otherwise provided, was governed by 33 M.R.S.A. §751(1), since the introductory paragraph of section 751 merely provided:

"Except as provided in Title 11,
registers of deeds shall receive for:"

See 33 M.R.S.A. §751, 1st ¶, as repealed and replaced by P.L. 1971, c.321. By virtue of P.L. 1977, c.145, §1, however, the

Mrs. Muguette C. Thompson
September 4, 1981
Page 4

introductory paragraph of section 751 was amended to read as it presently does. Chapter 145 of the Public Laws of 1977 originated as L.D. 718 (H.P. 591) which, as originally drafted, did not include any amendment to section 751's introductory paragraph. Indeed, the Statement of Fact accompanying L.D. 718 indicates that the Legislature was aware that 33 M.R.S.A. §751(1) provided for a general recording fee, since it stated as follows:

"The purpose of this bill is to revise the fee schedule for the recording of instruments. The general fee shall remain \$5 for the first page and \$1 for each additional page. This bill would provide a number of special fees for the recording of certain instruments."
(emphasis added).

L.D. 718 was referred to the Committee on Local and County Government which issued an "ought to pass" report with Committee Amendment "A" (H-181). Committee Amendment "A" repealed and replaced the introductory paragraph of 33 M.R.S.A. §751 to read as it presently does. The "Statement of Fact" accompanying the Committee Amendment indicates that the Legislature intended to create a general recording fee for those documents for which no specific fee was otherwise provided. It stated, in part, as follows:

"This amendment provides for a uniform recording fee for all documents presented for recording in the registry of deeds, except for those that have a different fee specifically established by this statute."

In thus amending the introductory paragraph of section 751, it appears that the Committee on Local and County Government, as well as the Legislature as a whole, failed to recognize that a general recording fee already existed in subsection 1 of section 751. As noted earlier, based upon our reading of the language of section 751 and our examination of the legislative history of that law, we believe that the Legislature has inadvertently provided for two general recording fees in the same statute. As we also pointed out earlier, a conflict between these two "uniform" fees will arise when the amendment to 33 M.R.S.A. §751(1) takes effect on September 18, 1981.

It is, of course, a well recognized principle of statutory construction that the language of a law should be interpreted, if reasonably possible, so as to avoid rendering it superfluous. See, e.g., State v. Tullo, Me., 366 A.2d 843 (1976); Finks v.

Mrs. Muguette C. Thompson
September 4, 1981
Page 5

Maine State Highway Commission, Me., 328 A.2d 791 (1974). On the other hand, where legislative action has created an irreconcilable conflict or inconsistency between two statutory provisions dealing with the same subject matter, such a result is often unavoidable. In such cases, it is generally held that the later statute controls over the earlier one, to the extent of the conflict or inconsistency. See, e.g., Small v. Gartley, Me., 363 A.2d 724 (1976); Lewiston Firefighter Ass'n., Local 785, AFL-CIO v. City of Lewiston, Me., 354 A.2d 154 (1976); State v. Taplin, Me., 247 A.2d 919 (1968). In our view, the Legislature's amendment of 33 M.R.S.A. §751(1), by P.L. 1981, c. 279, §24, will create an irreconcilable inconsistency between the provisions of that law and the introductory paragraph of section 751. Under these circumstances, we believe that, effective September 18, 1981, the general recording fee which registers of deeds should charge for documents or instruments for which no specific fee is otherwise provided, should be controlled by 33 M.R.S.A. §751(1), i.e., \$6 for the first record page and \$2 for each additional record page thereafter. We believe this conclusion is consistent with the Legislature's primary purpose in enacting Chapter 279 of the Public Laws of 1981, which was to increase the fees charged by registers of deeds for the recording of documents. See "Statement of Fact" to H.P. 766, L.D. 956.

Your remaining inquiries can be disposed of somewhat more quickly. You have asked what fee registers of deeds should charge for recording the following documents:

- (1) State of Maine income tax liens and discharges filed pursuant to 36 M.R.S.A. §§5313 and 5314;
- (2) State of Maine sales and use tax liens filed pursuant to 36 M.R.S.A. §1961;
- (3) Non-support liens filed pursuant to 19 M.R.S.A. §503(1).

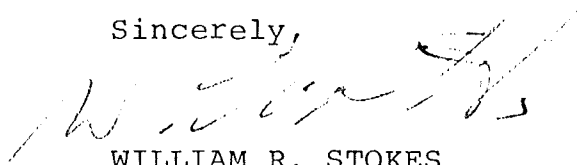
Since the Legislature has not specified a fee for the filing of these documents, the appropriate fee, effective September 18, 1981, is that provided in 33 M.R.S.A. §751(1), as amended by P.L. 1981, c.279, §24.

Finally, you have asked what fee should be charged for the recording of liens, filed pursuant to 26 M.R.S.A. §1227(1), for the failure of an employer to pay the contribution for unemployment compensation. The fee for recording such liens is established at \$3 by operation of 26 M.R.S.A. §1227(2).

Mrs. Muguette C. Thompson
September 4, 1981
Page 6

We hope this information is helpful to you. Please feel free to call upon us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. R. Stokes", is written over the typed name.

WILLIAM R. STOKES
Assistant Attorney General

WRS:sm
cc: Senator Barbara Trafton