

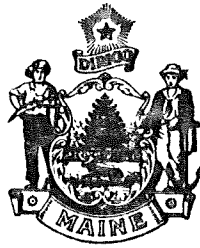
MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
February 16, 1983

Honorable Patrick T. Jackson, Jr.
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Jackson:

You have asked for an opinion of the Attorney General as to whether the American National Red Cross is exempt from property taxation in the State of Maine under 36 M.R.S.A. § 651(1)(A). We are of the opinion that the Red Cross is exempt.

Section 651 of Title 36 provides that

651. Public property

The following public property is exempt from taxation:

1. Public property.

A. The property of the United States so far as the taxation of such property is prohibited under the Constitution and laws of the United States.

The United States Constitution prohibits the taxation by states of the property of the United States government. Equally well settled is that property of instrumentalities of the federal government, such as national banks, is immune from state taxation. McCulloch v. Maryland, 17 U.S. (4 Wheat) 316 (1819).

The United States Supreme Court held in Dept. of Employment v. United States, 385 U.S. 355 (1966), that the American National Red Cross was a tax-immune federal instrumentality. The organization was chartered by Congress, and it is subject to considerable governmental supervision. The officers of the Red Cross are appointed by the President. The organization must undergo a regular audit by the Defense Department. The Red Cross assists the Armed Forces in a wide variety of functions, and aids the government in providing

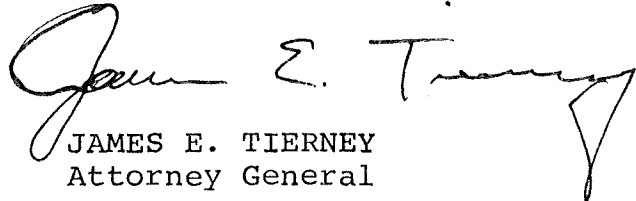
disaster assistance to the states. See 36 U.S.C. § 1 et seq. The traditional view of the status of the Red Cross was expressed by Justice Fortas as follows:

. . . [T]ime and time again, both the President and the Congress have recognized and acted in reliance upon the Red Cross' status virtually as an arm of the Government. Id. at 359-360.

Since the Supreme Court has held that the Red Cross is constitutionally immune from state taxation, and Congress has passed no law waiving the Red Cross's property tax immunity, it is our opinion that the property of the Red Cross is exempt from property tax in Maine by virtue of 36 M.R.S.A. § 651(1)(A) and the United States Constitution.

Insofar as our answer eliminates the necessity of enacting L.D. 1787^{1/}, we need not address whether the intent of the Legislature expressed in the statement of fact of L.D. 855 of the 109th Legislature^{2/} would render the reimbursement requirement in art. IV, pt. 3d, § 21 of the Maine Constitution inapplicable if L.D. 1787 were enacted. Please do not hesitate to contact this office if we may be of further assistance.

Sincerely,


JAMES E. TIERNEY
Attorney General

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- 1/ L.D. 1787 would expressly exempt from taxation the real estate and personal property of the American Red Cross and its chapters in this State.
- 2/ L.D. 855, enacted as P.L. 1979, c. 467, repealed the express tax exemption for the Red Cross. The bill's statement of fact makes it clear that the Legislature believed that the Red Cross would still be eligible for tax exemption as a benevolent and charitable institution.