

MAINE STATE LEGISLATURE

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Department of Attorney GeneralMEMORANDUM

To: David Ledew, Property Tax Division
Bureau of Taxation

From: Diane E. Doyen, ^{ED} Assistant Attorney General

Date: March 21, 1989

Subject: Bangor Baptist Church: Application for Exemption
From Property Taxation

You have asked that this office issue a legal opinion concerning the application by the Bangor Baptist Church for property tax exemption on that real estate owned by the Church upon which a radio station antenna is presently located. It is my understanding that the property in question is located in an entirely different town from the site of the Church itself. The property in question is located in Grand Falls, an unorganized township over which the State Tax Assessor has direct responsibility for assessment in collection of taxes pursuant to 36 M.R.S.A. § 302.

The Bangor Baptist Church is seeking exemption from tax on this property pursuant to the provisions of 36 M.R.S.A. § 652(1)(G). Section 652 provides for the exemption from taxation of property owned by certain institutions and organizations. Sub-section 1(G) provides in pertinent part that:

Houses of religious worship, including vestries, and the pews and furniture within the same; . . . ; and property owned and used by a religious society as a parsonage to the value of \$20,000, and personal property [within the parsonage] not exceeding \$6,000 in value, For purposes of the tax exemption provided by this paragraph a parsonage shall mean the principal residence provided by religious society for its clergymen

Clearly the property in question does not fall within the exemption for parsonage. Bangor Baptist Church argues that the term "houses of religious worship" should be liberally

construed to encompass the property in question. However, a liberal construction of taxation statutes is contrary to the long-standing policy followed by the Maine Law Court in tax matters.

The Law Court's policy of construing tax exemption statutes strictly is one of long duration. Silverman v. Town of Alton, 451 A.2d 103, 105 (1982). Taxation is the rule and tax exemption is the exception. Pentecostal Assembly, Etc. v. Maidlow, 414 A.2d 891, 893 (1980). An exemption is not to be extended to situations that are not clearly within the scope of the statutory provisions. See, Silverman at 105. The person seeking an exemption from taxation has the burden of establishing the exemption. Pentecostal Assembly, supra at 893.

It is important to bear in mind that Maine's property exemption statute, 36 M.R.S.A. § 652, is divided into numerous subsections, with different provisions governing tax exemption for different types of institutions and organizations. There are essential differences in these subsections. As a result, the tax exemption allowed one type of institution/organization is not equivalent to the exemption created for another institution/organization. The Osteopathic Hospital of Maine v. City of Portland, 139 Me. 24, 29, 26 A.2d 641 (1942).

These differences can be most clearly illustrated if one juxtaposes the provisions of subsection A (benevolent and charitable institutions) against those of subsection G (religious organizations). Subsection A makes tax exempt the "real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State" As quoted earlier, subsection G contains no mention of the broad terms real estate and personal property. Instead, that provision narrowly sets forth specified real and personal property which are exempted.

The main focus of the latter provision is to exempt the church or house of worship and a parsonage of limited value. Osteopathic Hospital, supra at 29. Only that real estate together with furnishings of limited value therein are exempt from property tax. It is not possible to extend the broader provisions of paragraph A to religious societies. Id. at 30. In Maine law it is well settled that, for purposes of property tax exemption, religious purposes are not to be equated with benevolent and charitable purposes. Pentecostal Assembly, supra at 894.

The Osteopathic Hospital case, which I have cited above, is the only Maine case which discusses to any extent the provisions of section 652(1)(G). That case quotes with

approval several rulings of the Massachusetts Supreme Judicial Court in cases in which that court was interpreting the corresponding Mass. statute. The Mass. statute is very similar to Maine's statute and reads as follows:

The following property shall be exempt from taxation
Eleventh, Notwithstanding the provisions of any other general or special law to the contrary, houses of religious worship owned by, or held in trust for the use of, any religious organization, and the pews and furniture and each parsonage so owned, . . . , but such exemption shall not, except as herein provided, extend to any portion of any such house of religious worship appropriated for purposes other than religious worship or instruction

59 M.G.L.A. § 5, clause eleventh (1988).

The primary Mass. case interpreting this statute is an old one but has never been overruled or otherwise revised; it is Evangelical Baptist B & M Society v. City of Boston, 204 Mass. 28, 90 N.E. 572 (1910). That case states that the purpose of the Massachusetts statute was to exempt from taxation ordinary church edifices, owned and used in the usual way for religious worship. It further states that the exemption is only for houses of worship owned and occupied by religious organizations and used by them for public worship. 204 Mass. 28, 31, 90 N.E. 572, 573. Basically, the Court ruled that the exemption is intended to apply to such buildings as are commonly designated as churches.

The State of Connecticut also has a statute similar to the ones in Maine and Massachusetts. It reads in pertinent part:

The following described property shall be exempt from taxation:

(13). Houses of religious worship. . . . , houses of religious worship, the land upon which they stand, their pews, furniture and equipment owned by, or held in trust for the use of, any religious organization;

12 C.G.S.A. § 12-81, sub-sec. 13 (1983).

The Supreme Court of Connecticut has interpreted the foregoing statute in like manner to the Mass. Court. In fact, the

Connecticut Court has found the language of the Connecticut statute is suggestive of having been taken from the Massachusetts statute. In the case of Masonic Bldg. Assoc. of Stamford v. Town of Stamford, 119 Conn. 53, 174 A. 301 (1934), the court defines houses of religious worship to be buildings having those essential characteristics of churches. 174 A. 301, 304. The court found that the use of the word "pews" in the statute to be supportive of that interpretation.

In a later decision, the court found that:

The conception that, to be entitled to an exemption, a building devoted to religious uses should be a place of public worship is implicit in the theory of exemption of such buildings.

Town of Woodstock v. The Retreat, 125 Conn. 52, 3 A.2d 232, 234 (1938).

The exemption for houses of religious worship is intended to apply to such buildings as are commonly designated as churches. Id.

The taxpayer Bangor Baptist Church argues that the radio station WHCF (including the antenna necessary to broadcast the station's programs) is an extension of their ministry. They claim exemption from tax pursuant to 36 M.R.S.A. § 652(1)(G), arguing that the term "houses of religious worship" must be liberally construed to encompass the radio station and its attendant parts. The City of Bangor has accepted this argument and no longer taxes the property which houses the radio station, located adjacent to the church building.

As I have detailed in this opinion, my research leads me to the opposite conclusion. Tax exemption statutes traditionally have been given strict, rather than liberal, construction by the Law Court. The term "house of religious worship" means an ordinary church edifice in which a religious organization conducts public worship. It includes the land upon which the building stands together with that land sufficient to permit normal ingress and egress and parking. It does not include property which houses a radio station, its transmitter, antenna, et al.

It is my opinion that the property in question, located on Passadumkeag Mountain in Grand Falls, is not exempt from taxation under any provision of Maine law. The State Tax Assessor may continue to assess taxes on that property to the owner Bangor Baptist Church.