

MAINE STATE LEGISLATURE

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Public Documents of Maine:

BEING THE

ANNUAL REPORTS

OF THE VARIOUS

PUBLIC OFFICERS AND INSTITUTIONS

FOR THE YEAR

1875.

VOLUME I.

AUGUSTA:

SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.

1875.

REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF MAINE.

1874.



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citizens of Rockland, to procure a warrant of search and seizure, and to search certain designated places, where, it was alleged, intoxicating liquors were kept for illegal sale, and to prosecute the alleged offenders; that the Sheriff applied to the proper magistrate for such process, but before making his complaint, he learned that the proposed prosecution had come to the knowledge of the supposed offenders, without any fault on his part, and he believed that if search were made no intoxicating liquors would be found in the places designated; in other words, he believed that no such liquors were then and there kept and deposited for illegal sale. How, then, could he make oath that he believed they were then and there so kept and deposited and intended for sale in violation of law? In my opinion, he could no more make such complaint against the alleged offenders and the places designated, than he could against any other citizens of Rockland, or places of business where he did not believe intoxicating liquors were kept or deposited for illegal sale.

The only course open to the Sheriff under the circumstances, was to prosecute the supposed offenders for illegal sales, either by complaint to the proper magistrate, or by the alternative method prescribed, of indictments at the next session of the Grand Jury, early in March; and in my opinion, it was within his discretion to adopt either of these modes of procedure.

STATE OF MAINE.

ATTORNEY GENERAL'S OFFICE,
Bangor, June 1, 1874. }

To the Honorable the Governor and Council:

I have the honor to submit my opinion, as requested by the Council, upon the following question:

“How many acres of land in all are the Trustees of the Maine Female Seminary entitled to receive from the State under their grant of May 20, 1850?”

The language of the grant is: “The Land Agent is hereby authorized and directed to convey to said Trustees a quantity of land equal to two townships from any lands held in severalty by this State,” (Chap. 374, Special Laws of 1850).

In this State the average township is six miles square, a size

fixed upon as convenient and suitable for the purposes of a town, and when the territory to be surveyed has admitted of the plan that size generally, but not exclusively, has been adopted. The location of townships for the permanent school fund has been sometimes of larger and sometimes of smaller size than six miles square, but in every case a township has counted one. The ten townships reserved in the grant to the E. & N. A. R. Co. have been selected and located, and in no single instance do they contain exactly 23,040 acres. Four of them contain respectively 24,826, 22,056, 30,826 and 16,874 acres.

The words of the grant, however, are to have effect, and a reasonable construction therefor is to be sought. In all legislative grants a "township" of land has uniformly been understood to refer to surveys of public lands as generally made, into townships of six miles square. That is the average township, containing 23,040 acres.

But in every township of the public lands a thousand of its acres are by law reserved and devoted to public uses, "and at the same rate in all tracts less than a township." R. S., Chap. 5, Sect. 9. This statute is virtually the enactment of a Constitutional provision, (Art. X, Sect. 5, "seventh" part). Every Legislative grant therefore, of a "township" such as is known to the laws as a township, without any other designation, is to be understood a grant of a tract of land six miles square, subject to this Constitutional charge or limitation. The power of the Legislature to the extent of such reservation is limited, and the grantee can take no more than the grantor has the right to convey.

Nor is it in the power of the Legislature by varying the terms of the grant from a "township of land" to "land equal to a township," to free the grant from the Constitutional charge. For if so, the grantee under the terms of such a grant, of viz: "land equal to a township," would have the right to locate the grant, *in solido* upon a single township, absorbing the whole 23,040 acres, and the Constitutional provision thus rendered wholly nugatory.

In my opinion, therefore, the grant to the Maine Female Seminary, does not entitle the grantees to receive 46,080 acres *free* from the reservations to public uses.

The only special privilege afforded the grantees by the peculiar terms of the grant, is that of a wider range in the selection of their lands. They may locate their whole grant of 46,080 acres upon two townships *in solido*, in which case the grant would be

satisfied, though subject to the "Reservations"; or they may locate the same number of acres in tracts of greater or less extent in several townships, or upon "tracts less than a township," but subject still to that constitutional charge which is of uniform operation upon every part of the public domain.

The grantees may locate 46,080 acres. The Reservations are not to be made by deducting 2,000 acres before the grant is located, thus reducing the grant to 44,080 acres. Such reduction would subject the grant to *double* "Reservations." For suppose the grantees locate 23,040 acres upon one township, and 21,040 upon another township containing that number of acres only, their grant would still be subject to the reservations of a thousand acres in each township selected. And so also, "at the same rate" if they locate upon "tracts less than a township." There is no deduction that can be made from their two full townships, and no limitation or change imposed, save the "Reservations" *proper*, and these can be imposed only in the manner prescribed by law, viz: by *locating* them upon the lands *selected*.

Properly, in the deeds given of the several tracts or parcels of land selected, the Reservations should have been made, but if not made in express terms, they are implied, for they exist by force of a higher law, and may be set out to the public use in the mode prescribed by law.

STATE OF MAINE.

ATTORNEY GENERAL'S OFFICE, }
Bangor, June 25, 1874. }

To the Hon. Governor and Council of Maine:

The question submitted by the Council for my opinion is: "Whether the horses and cars of the Portland Horse Railroad Company is taxable by the city of Portland by an assessment upon said company—said company being a corporation created by the laws of this State?"

By the general provisions of law respecting the assessment of of taxes, all real and personal estate of corporations is liable to taxation. It is not a question, therefore, whether the horses and cars of such a corporation is exempt from taxation, but a mere question as to the form and mode, in which taxes are to be assessed.