

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

November 30, 1902.

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PETITION FOR ABATEMENT OF EXCESSIVE TAXES.

The statute provisions relating to the taxation of railroads must be strictly followed in assessing taxes thereon. The word "system" when employed to denote the extent of the road in levying taxes, means the entire line of railroad controlled, managed, and covered in by the company. In case of excessive taxation the Board of State Assessors have authority under the statutes to abate such excess.

October 11, 1901.

To the Board of State Assessors:

Gentlemen:—

STATEMENT OF FACTS.

It appears from the statement of the solicitors at Portland of the Grand Trunk Railway System, and also from information gathered from the Board of Assessors, that in past years said company, in making its returns, has not included its entire system in the returns as required by statute, and that the tax assessed was assessed on the basis of the return of only part of the system. This error arose in the office of the company and was not discovered until this year. The first return made this year to the Railroad Commissioners continued the error as in years past. The Railroad Commissioners reported said road to the Board of State Assessors without rectifying the error. Later said railway system, through its proper officers, made an amended and corrected return complying with the statute and rectifying the error hereinbefore set forth. In the meantime the tax had been levied upon said railway system under the first return and had been committed to the Treasurer of the State for collection. By the amended return it appears that the tax of said railway system, due to the State, should be considerably less than the amount committed to the State Treasurer. I do not understand that there is any question whatever that said error was made, and that by the first assessment committed to the State Treasurer the Grand Trunk Railway system was taxed a sum in excess of what it should be taxed.

The question now arises: Can the State Board of Assessors abate so much of the tax committed to the State Treasurer as is in excess of the amount due from said railway system under the corrected return?

These facts are set out from oral statements made to me both by the Board of State Assessors and also by the solicitor of said railway system, and I base my opinion upon these facts as stated.

OPINION.

A tax has none of the elements of a contract. It is a levy on property within the boundaries of the State either upon inhabitants, corporations or firms, for the purpose of meeting the expenses of state and municipal government. All taxes are levied by reason of the authority of some statute and can only be levied when the Legislature has given authority by some statute so to do. The Legislature lays down methods whereby such taxes may be levied and the exact course which shall be followed in ascertaining how much tax certain property shall pay. Such is the case in relation to the levy of an excise tax on railroads.

Such being the case the law providing for the levy of taxes must be followed closely, otherwise the tax cannot be collected.

Assuming that the Board of Railway Commissioners report to the Board of State Assessors the facts in relation to any given railroad, for the purpose of levying a tax thereon, and such report ignores the direction of the statute, then such tax cannot be collected unless such error is simply technical. But where some vital point of the law is ignored, then such error will vitiate the act of the Board of State Assessors in levying such tax.

Prior to the creation of the Board of State Assessors, as appears by Chapter 103 of the Public Laws of 1891, the authority to assess taxes on railroads, and all the details of such assessment, rested in the Governor and Council. Chapter 6 of the Revised Statutes, Section 45, provides that in case of error or a mistake in calculating the taxes, the person so aggrieved may apply for the abatement of any excessive tax within the year for which such tax is assessed, and that the Governor and Council, on a re-hearing and re-examination, finding such error or mistake existing, may thereupon abate such excess, and the amount so abated shall be deducted from any tax due and unpaid from the railroad company on which the excise tax was assessed. * * *

By the Public Laws of 1891, Chapter 103, a Board of State Assessors was created for the express purpose of assessing the State tax on various classes of property within the State, including railroads. By Section 6 of said Chapter 103, it was pro-

vided that said State Assessors shall do and perform all the acts and duties now required by law to be done by the Governor and Council relating to the assessing and taxing of railroad corporations, and associations. * * *

Chapter 103 of the Public Laws of 1891 does not specifically repeal any prior provision in relation to the assessment of taxes. In its entire makeup and wording, it indicates that the Board of State Assessors was created for the express purpose of performing those duties and functions, which had prior thereto, devolved upon the Governor and Council, as appears in Chapter 6 of the Revised Statutes. This public law of 1891 does not incorporate all of the provisions in so many words as appears in chapter 6 of the Revised Statutes, but for the purpose of saving the incorporation of all the provisions of that chapter, it did provide in one simple clause that the State Board of Assessors should "do and perform all the acts and duties now required by law to be done by the Governor and Council relating to the assessing and taxing of railroad corporations." * * *

If we assume that this sweeping clause of chapter 103 of the Public Laws of 1891 did not include section 45 of chapter 6 of the Revised Statutes, wherein authority was given to the Governor and Council to abate excessive taxes, then of course the authority to abate excessive taxes still rests in the Governor and Council. If we assume, on the other hand, that section 6 of chapter 103 of the Public Laws of 1891 did include within its sweeping clause section 45 of chapter 6; that is, the right to abate excessive taxes, then the power was transferred to the Board of State Assessors.

Hence this question arises, was this power transferred to the Board of State Assessors? We cannot assume for a moment that the Legislature intended to do away absolutely with section 45 of chapter 6 and leave no opportunity to correct errors and for the adjustment of unfair assessments, for this assumption would be simply unreasonable and untenable. So we come back to the point that either the Governor and Council or the Board of State Assessors has the right to adjust the excessive taxes and to abate the same.

Had the Legislature of 1891 intended to give the Board of State Assessors certain powers which the Governor and Council formerly possessed, and to continue in the Governor and Council

other powers relating to the matter of taxation, then the Public Laws of 1891, chapter 103, would have specifically set out what sections and provisions of chapter 6 of the Revised Statutes should devolve upon the State Board of Assessors, and, on the other hand, it would have set out what sections and provisions and the duties thereunder as set out in said chapter 6 of the Revised Statutes still remained and should remain with the Governor and Council. This, however, we do not find to be the case. The Public Laws of 1891 do not specify that any provision in relation to the taxation of railroads, as set out in chapter 6 of the Revised Statutes, shall remain in the Governor and Council, and, on general grounds, the placing in one board the authority to collect data, assess taxes, make reports, etc., and the placing in another board the right to abate such excessive taxes and to correct the errors of a prior board, would be a piece of folly of which we can hardly believe the Legislature to be guilty.

Hence there is but one conclusion which we can reach in the matter and that is that all of the provisions in relation to the abatement of taxes, as set out in section 45 of chapter 6 of the Revised Statutes, were transferred to the Board of State Assessors under the sixth section of chapter 103, and that the Board of State Assessors has legal authority, not only to correct such errors as may appear in the returns of any railroad, but that it is their duty so to do when they shall discover that any error has been made, and, further, that if an excessive tax has been levied by reason of such error, then that said Board has all the requisite authority to abate such tax to the amount of the excess shown by the true facts of the case.

My opinion, in brief, then, is that the Board of State Assessors after a hearing thereon should file with the State Treasurer proper amendments to its commitment of taxes to the State Treasurer against the Grand Trunk Railway system and order an abatement of the excessive tax, if any, according to the true facts found to exist.

Respectfully submitted,

GEO. M. SEIDERS,

Attorney-General.

NOTE.—A similar opinion to the foregoing, relating to the Canadian Pacific Railway Company, was drawn and submitted

to said Honorable Board of State Assessors, differing only in this respect: that the main question therein was whether or not the water transportation of said Canadian Pacific Railway Company should be included as a part of the system of the railroad, and that in assessing the taxes against said railroad the entire mileage should include not only the railroad lines proper but also its transportation lines across the Pacific ocean as a part of its system.

My opinion as rendered thereon was that that portion of its business which related to transportation by water across the Pacific ocean was not included within the meaning and intention of the statute providing for the taxation of railroads.

TENURE OF OFFICE OF APPOINTIVE OFFICERS OF MAINE INDUSTRIAL SCHOOL FOR GIRLS.

The tenure of office of appointive officers in the Maine Industrial School for Girls is controlled wholly by the rules and regulations of the institution.

To the Trustees of the Maine Industrial School for Girls:

GENTLEMEN:—I herewith submit to you my opinion in relation to the tenure of office of the steward of the Maine Industrial School for Girls, concerning which you have made inquiry.

By examination of chapter 127 of the Public Laws of 1899 it appears that prior to March 17, 1899, a school known as the Maine Industrial School for Girls had been established in the city of Hallowell; that on said 17th day of March, 1899, said school, by legislation, was taken over and vested in the State and became a State institution to be cared for, managed and controlled by the State as all State institutions are, varying only in the kind of work to be done. Among other things which appear in said chapter 127 is the following:

“Sect. 4. The trustees shall have charge of the general interests of the school and see that its affairs are conducted in accordance with law and such by-laws as they may adopt. They may adopt by-laws which shall be valid when sanctioned by the governor and council.”