

# MAINE STATE LEGISLATURE

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# STATE OF MAINE.

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REPORT

OF THE

# ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1906.

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AUGUSTA  
KENNEBEC JOURNAL PRINT  
1907

It is my opinion that the dividend of not less than 5% referred to is to be understood in its ordinary sense, and refers to corporations which as going concerns are paying regular dividends of not less than 5% a year on all the stock issued, whether preferred or common or both.

Considering the same statute just referred to, the bank examiner in October, 1906, submitted to us the further questions as to,—

(1) Whether or not the 5% noted should have been paid for more than one year, and

(2) Whether a single dividend of 5%, coupled with reasonable evidence that the company was then earning and conducting a business which fairly promised that it would continue to earn that amount, be sufficient.

Opinion was rendered November 1, 1906, as follows :

(1) "It does not seem to me necessary that the five per cent noted must have been paid for more than one year. If it has been paid for one year it would seem to me sufficient.

(2) It seems to me that a single dividend of five per cent, coupled with reasonable evidence that the company was then earning and conducting a business which fairly promised that it would continue to earn annually that amount or more would be sufficient."

#### STATE OFFICER WITHIN THE MEANING OF THE PROVISIONS OF CHAPTER 49 OF THE PUBLIC LAWS OF 1905.

In January, 1906, the following inquiry was submitted to us from the governor and council :

"Do you consider Prof. F. C. Robinson, State Assayer, a State official? In other words, does the law require him to present an itemized bill for his services and expenses and make oath to his expenses?"

On January 31, 1906, opinion was rendered as follows :

Before I could answer the question to my satisfaction I deemed it necessary to have a copy of the bill submitted by Prof. Robinson in order that I might ascertain with reference to what duties he had submitted a bill and I accordingly wrote to Mr. Burns for a copy of the bill. He replied under date of January 19th, which reply was received by me on January 20th.

In the Opinion of the Justices, 3 Me., 483, our Maine court says: "It appears, then, that every office, in the constitutional meaning of the term, implies an authority to exercise some portion of the sovereign power, either in making, executing, or administering laws."

In *Brown vs. Russell*, 166 Mass., 14, in a discussion as to whether certain persons, appointed to the detective department under the public laws of that state, were public officers, the court says: "They are appointed by the governor for the term of three years, subject to the removal of the governor. . . . They have to exercise some of the powers of government."

In an extended note upon the heading "What is Office" found in 72 Am. Dec. 179, we find the following language: "One of the characteristics of an office named in the definitions is tenure, duration, or continuance. Certainly, the fact that the duties of an officer are continuous and permanent and not merely transient or temporary, furnish one ground for holding it to be an office."

Again in the same note "If an incumbent of a position is required to take the oath prescribed for officers, this furnishes a criterion for holding him to be an officer."

Again in the same note "One who has been appointed or elected in a manner prescribed by law, has a designation or title given him by law, and exercises functions concerning the public assigned to him by law, is a public officer."

Under the title "Officer," in Rawle's Revision of Bouvier, and under the sub-division of "Public Office," we find "The true test is that it is a parcel of the administration of the government."

From these various citations we find at least four points which may throw some light upon the subject under discussion.

I. Appointment in manner prescribed by law and having a designation or title which is given to him by law.

II. Oath.

III. Tenure, duration, or continuance.

IV. Exercise of some portion of the sovereign power either in making, executing or administering laws.

Turning now to the case immediately in hand, R. S. of Me. chap. 29, sec. 15, requires that all intoxicating liquors purchased by the State Liquor Commissioner shall be inspected, tested or

analyzed by a competent assayer and further provides that such assayer shall be appointed by the governor and council. Nothing is said in this section as to the length of the term of the assayer thus appointed, or as to his subscribing to the oath of office but does provide that the appointment is to be by the governor and council and in chapter 2, section 37, we find it provided that all civil officers appointed by the governor and council whose tenure of office is not fixed by law or limited by the constitution, shall hold their respective offices for four years and no longer unless reappointed, subject to removal at any time within said term by the governor and council. Chapter 2, section 40, also provides, after the enumeration of certain appointees, that "every other person elected or appointed to any civil office shall take and subscribe the oath before any one member of the council or before any magistrate commissioned by the governor for that purpose except when the constitution otherwise provides.

We therefore observe in the case of Prof. Robinson that he was (I) appointed by the governor and council in the manner prescribed by law; we find as a matter of fact that he did (II) subscribe to the oath of office on April 1, 1905, before Weston Thompson, Dedimus; that (III) the tenure, duration and continuance of his office is fixed by law; that (IV) he exercises some portion of the powers of government.

I am therefore of the opinion that he is a State officer within the meaning of chapter 49 of the Public Acts of 1905.

Finally, attention should be directed to the form of bill presented by Prof. Robinson, which is as follows:

"BRUNSWICK, ME., December 30, 1905.

State of Maine to F. C. Robinson, Dr.

To assaying liquors for the State Liquor Commissioner, visiting and inspecting agencies and assaying other stocks according to the report submitted, \$950.00."

In this bill nothing is said about expense and under the provisions of chapter 49, P. L. 1905, it is only a bill of expense which must be itemized and sworn to. If Prof. Robinson's bill includes expense, his expense should be itemized and sworn to. If the bill is wholly for services then we turn again to R. S., chapter 29, section 15, and find at the close of the section these words: "The compensation of such assayer shall be fixed by

the governor and council, and, with other reasonable expenses, shall be paid out of the State treasury." This leaves the compensation to be fixed by the governor and council, and with reference to compensation the statute demands no itemizing or oath. The governor and council will of course reach conclusion as to the amount of that compensation from such evidence as may be presented or which they may require.

#### TAXES. UPON PERSONAL PROPERTY STORED OUTSIDE THE JURISDICTION OF THE STATE.

On February 28th, 1906, an inquiry was submitted to us from the Board of State Assessors as follows:

"Can assessors of a Maine town tax such personal property as potatoes and starch while stored in New Brunswick outside the jurisdiction of the State?"

On March 1st, 1906, opinion was rendered as follows:

"I have your favor of February 28th, enclosing letter of H. W. Levesque, one of the selectmen of Frenchville and asking for opinion upon certain propositions contained therein. You submit only a single question in your letter, namely, "Can assessors of a Maine town tax such personal property as potatoes and starch while stored in New Brunswick outside of the jurisdiction of the State?" An examination of the letter of Mr. Levesque shows that he goes a little farther and asks not only this question, which you have asked, but also asks which town should tax the potatoes and starch, providing they should be taxed at all.

Using the language of Judge Strout in *Farmingdale vs. Berlin Mills Company*, 93 Me., 333, "The general provision of law is that personal property shall be taxed to the owner in the town where he is an inhabitant on the first day of each April. To this general rule the statute makes certain exceptions." Turning now to chapter 9, section 13, clause X, we find among the exceptions "personal property in another state or country on the first day of each April and legally taxed there." Before a final answer can be given to the question, it must be known whether the potatoes and starch in another country, to wit, in the provinces, were legally taxed there on the first day of April. If it was so taxed then it is my opinion that it cannot be taxed in any town in Maine.