

# 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  
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intended for manufacture at St. Agatha, taxable in St. Agatha. Under the same reasoning, the starch, which is a manufactured product of the mill would be taxable at St. Agatha, providing, of course, that it was stored in the provinces and not legally taxed in the provinces.

#### MARRIAGE. COMMISSION TO SOLEMNIZE NOT TO ISSUE TO ALIENS.

In June, 1906, an inquiry was submitted to us from the Governor and Council asking whether commission to solemnize marriages in the State of Maine should be granted to aliens or non-residents of the State.

On June 9th, opinion was rendered as follows :

I am in receipt of the correspondence relating to the request of Rev. J. A. Winfield for a commission to solemnize marriages in Maine, and with request that I express my opinion as to the propriety of issuing such a commission.

It appears from the correspondence that Mr. Winfield is not an American citizen nor even a resident of Maine. This I assume to be an unchallenged fact. The question then is whether an alien and non-resident of the State should be commissioned to solemnize marriages in Maine. In my view of the case the question is easily divisible into two parts.

First, is a minister of the gospel commissioned to solemnize marriages acting in the capacity of a public officer?

Second, may an alien and non-resident hold public office within this State and exercise the functions of that office?

I am not aware that the supreme court of Maine has ever passed upon the first branch of this question, nor am I aware of any act of legislature which controls the situation. One of the New England States, however, for whose court we all have respect, has given a distinct ruling upon the subject in the following unequivocal language :

"A clergyman in the administration of marriage is a public, civil officer." *Goshen vs. Stonington*, 4 Conn. 209, 10 Am. Dec. 121. See also *Bouvier's Dictionary*, Rawles Revision, under "Officer."

As to the second branch of the question :

"It is an acknowledged principle of popular government that it is instituted by the citizens for their liberty and protection and that it is to be administered and its powers and functions exercised by them and through their agency, and that, therefore, an alien is not eligible to office." Am. & Eng. Ency. of Law. Vol. 19, p. 401, 1st Ed.

There are not wanting instances even in our own State where an alien has been elected to public office and has exercised the functions and discharged the duties of that office and our court, notably in the Opinion of the Justices, 70 Me. 565, has said that "such an one would be an officer de facto and clothed with apparent right."

This, however, can hardly be construed as authorizing or encouraging the knowing election or appointment to office of an alien.

Here again, I am not aware that the supreme court of Maine has ever passed upon the second branch of this question, nor am I aware of any act of legislature which controls the situation.

Other courts of final jurisdiction have said as follows:

"It is an acknowledged principle, which lies at the very foundation, and the enforcement of which needs neither the aid of statutory or constitutional enactments or restrictions, that the government is instituted by the citizens for their liberty and protection, and that it is to be administered and its powers and function exercised by them and through their agency." *State vs. Murray* 28th, Wis. 96, 9 Am. Rep. 489.

In that case an alien had been elected to the office of sheriff and had entered upon the discharge of the duties of that office, and under those conditions in an action of quo warranto, the court held that he could not lawfully hold office.

"All political power is inherent in the people, and those who are not of the people can have no share in it. The people are such as are born upon the soil, by and for whom, in the first place, the government was ordained, and such persons of foreign birth as may elect to assume the obligation of a citizen by complying with the laws of naturalization as enacted by Congress. If they desire to secure political rights, they must cease to be aliens, and become citizens in the mode there prescribed. Until then they can neither vote nor hold office; they can neither choose nor be chosen, for that is to exercise political power, and they are not of the people who alone can exercise it."

Walther *vs.* Rabolt, 30 Cal. 185.

I am therefore constrained to the opinion that the commission referred to in your correspondence should not be issued to Mr. Winfield.

### PLANTATIONS. TAXATION OF.

In October 1906 an inquiry was submitted to us from the Board of State Assessors as to the rule for assessment of state and county taxes in plantations.

On October 18th, 1906, opinion was rendered as follows:

In order to approach the matter properly, it seems to me that we should first turn to R. S., chapter 4, sections 113 and 114. You will observe by an examination of those two sections that at stated periods it becomes the duty of the county commissioners to ascertain by actual enumeration what townships in their respective counties have not less than two hundred inhabitants and when they shall have found a township having not less than two hundred inhabitants, it becomes the duty of the commissioners to issue their warrant to those inhabitants commanding them to assemble and choose certain plantation officers. This statute seems to be mandatory and therefore I think I may at least for the purpose of this opinion allude to this form of organization as compulsory organization. I say this because it appears to me that the statute quite plainly means that when a township shall have arrived at the dignity of two hundred inhabitants or more, then it shall be required to take on certain public burdens and perform certain public obligations.

The very next section, however, (115) provides that any unincorporated or unorganized place containing less than two hundred inhabitants, or as the statute says, "any number of inhabitants" may be organized into a plantation at their own volition and not by reason of any compulsory process. For convenience I refer to this as voluntary organization. Section 115, therefore, provides a method where an unorganized place desiring the benefits of organization may have those benefits by proceeding according to section 115.

Section 116 applies only to the order of procedure at the meeting for organization and applies to both forms of organization.

Section 117 provides for returns to be made to the secretary of state and after those returns are made "all laws applicable to