

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1906.

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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

organized plantations shall apply to plantations organized as herein provided; but plantations organized upon application of three or more citizens as above provided, shall not be required to pay state or county taxes unless by special order of the legislature." An examination therefore of section 113 to 117 inclusive, shows that there are two forms of organization, one compulsory so to speak, and the other voluntary. But it is to be noticed that in case of a voluntary organization the citizens shall not be required to pay state or county taxes unless by special order of the legislature.

You will also notice in section 121 the general provision that assessors of plantations shall be considered the selectmen thereof for the purpose of performing such duties as selectmen of towns perform.

Also notice in section 122 that assessors chosen in plantations organized under section 114 shall take an inventory of polls and valuation in their plantation, make returns to county commissioners, etc., "and thereupon their ratable proportion according to such valuation, of all state and county taxes, shall be assessed on such plantations in the same manner as on towns; and such plantations, and also such as may by special order of the legislature be required to pay state or county taxes, may raise money by taxation" etc. In other words, you will see that the statute clearly states that if a plantation is organized under the compulsory process, (i. e. two hundred inhabitants or more) it must pay state and county taxes. If it is organized under the voluntary process, it shall not be required to pay state and county taxes unless by special order of legislature.

From these observations I am led to say that the test to be applied as to state and county taxes as assessed upon plantations is not whether at the present time they have two hundred inhabitants, but rather as to whether they were organized under compulsory or voluntary process. I confess that this would require examination into the organization records of each plantation and I know of no other safe way to proceed.

You tell me that according to the exhibited list of plantations, you have checked those which have been paying state and county taxes in accordance with a long line of precedent and perhaps that precedent is the result of original examination into the records of organization of these various plantations. But in case of any contest or difference of opinion, I should say that

the safe rule for the State Assessors to follow would be to look into the record of organization of any given plantation and if that plantation shows a compulsory organization, then it should pay state and county taxes. If it shows a voluntary organization, I should say it would not pay state and county taxes.

You informed me that it has been your opinion that a given plantation must have at least two hundred inhabitants before it can be taxed as cities and towns are taxed, and by this expression I presume you mean state and county taxes. In reply to that I would say that I do not think it the business of the State Assessors to ascertain the number of inhabitants. On the other hand, it is the business of the county commissioners to ascertain the number of inhabitants and if there are two hundred or more, then there should be a compulsory organization, and you will notice as per section 124 that when organized by compulsory process former organizations cease.

The first duty to be discharged then is that of the county commissioners. If they have faithfully performed their duty, then the compulsory organization of a given plantation will be equivalent to saying to the State Assessors that there are two hundred or more inhabitants in that plantation and taxation will begin for state and county taxes. If the county commissioners are negligent in this respect and allow the population of the plantation to increase beyond the two hundred without compulsory organization, then how can the State assessors do anything different than to continue as if the population were less than two hundred.

I now pass to certain specific cases to which you call my attention.

1. A long list of plantations mentioned in chapter 123 of the Private and Special Laws of 1895. I confess that I think the language of the act is somewhat unfortunate in that it is not sufficiently clear as to whether these enumerated plantations are invested with the powers and privileges and subject to all the liabilities incident to a plantation organized under R. S. chapter 4, section 114, or to those plantations organized under section 115 of the same chapter.

Sections 2 and 3 of chapter 123 just referred to, would seem to raise the inference that these plantations are simply made the legal successors of former plantations of the same names concerning which there may have been some doubt as to the legal-

ity of the organization. I have an impression that this statute was passed a sort of "cure all" for the plantations therein named and that those plantations had been at various times organized but some questions had arisen as to the validity of their organization. Here again, in the absence of any explicit language in the act, I would say that the only safe rule would be to ascertain whether each plantation was originally organized by compulsory or voluntary process and tax each accordingly, inasmuch as the act says that these corporations are made "the legal successors of the former plantations of the same names."

2. The case of Portage Lake mentioned in chapter 127 of the Private and Special Laws for 1905. Here the language is woefully deficient and there is nothing in the act to assist the State Assessors in determining whether this plantation ought to pay state or county taxes, and I should recommend a memorandum to be made asking the legislature to amend this chapter 127 so that it will read in the last two lines "all the rights and privileges and subject to all liabilities of plantations organized under section 114 (or 115) of chapter 4 of the Revised Statutes." My alternative as to section 114 or 115 you will understand applies to the question of population. Until such amendment I should assess each as I have done in the past.

3. The case of Muscle Ridge Plantation in chapter 13 of the Private and Special Laws of 1905. The man who drew this act knew what he was about for he has distinctly said that this plantation should be subject to all the liabilities of plantations organized under section 115 of chapter 4, hence Muscle Ridge is not required to pay state or county taxes.

4. The case of Sandy River referred to in chapter 366 of the Private and Special Laws of 1905. Here again is the same deficiency of language as was found in chapter 127 of the Private and Special Laws of 1905. On the other hand, it is a little more like the long list of plantations referred to in chapter 123 of the Public Laws of 1895 for here there seems to be an attempt to confirm a former organization and until there is some amendment to this act, I should advise taxing it as it has been heretofore taxed.

I think that I have answered all of the general and special questions which you asked me with one exception which is

"whether in cases like the Sandy River case (where the legislature by special act organized the plantation) will this organization make any difference in the matter of taxation as distinguished from an organization upon petition of three or more persons."

My answer to this question is simply, when the legislature attempts to incorporate a plantation by special act, it should follow a similar form to that used in chapter 13 of the Private and Special Laws of 1905 (the Muscle Ridge case), and distinctly state whether the liability of the plantation which they are organizing be such liabilities as arise under chapter 4, section 114 or section 115. Without this clear cut legislation the assessors are not only unassisted but they are mystified, confused and embarrassed by special legislation. So you will see that where the legislature by special act organized a plantation, it will only make a difference in the matter of taxation when these distinctions arise by reference to section 114 or section 115 of chapter 4.

STATE ASSAYER. NOT TO DELEGATE AUTHORITY.

On the 8th of November, 1906, an inquiry was submitted to us by the Governor and Council relating to the right of Prof. F. C. Robinson to delegate the discharge of his powers as State Assayer to another person during his absence from the State.

On November 9th, 1906, opinion was rendered as follows:

In the early part of January of the present year, you inquired of me as to whether Prof. Robinson in his capacity as State Assayer is a State official. I reached the conclusion at that time that he is a State official, and if my conclusion were correct in that instance, the question now presented is can a State official, or in other words, can a public officer, delegate to another the powers which he is appointed to exercise.

The answer to this question depends in the first instance as to whether his powers are simply ministerial or whether they are judicial. In the broad sense of the term "official action is judicial when it is the result of judgment and discretion."

Chicago *vs.* Seben 56 Ill. 245.

"The power of a fish inspector to determine the quality and healthfulness of fish offered for sale in the markets of a city and