

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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"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

if found to be unwholesome or unfit to be eaten, to condemn and destroy it, is judicial in its nature."

Fath *vs.* Koeppel 7 Wisc. 867.

I thus quote a principle and a simple illustration as my authority for saying that in my judgment Prof. Robinson is clothed with judicial powers and not ministerial in the discharge of his duties as State Assayer.

It has been frequently held that a person having authority to exercise judicial powers cannot delegate those powers to another.

"If discretion and judgment are to be exercised either as to time, manner or feasibility of the exercise of an official function, the body or officer intrusted with the duty to decide must exercise it and cannot delegate it to another officer, body or person."

Am. Eng. Enc. of Law, 1st, Ed. Vol. 19, P. 461.

In a case decided more than thirty years ago in our own State Curtis *vs.* City of Portland 59 Me. 483, Judge Barrows says on page 487:

"At present, when public trusts and duties are so often perverted and so carelessly performed, we do not feel disposed to encourage greater looseness or to open new doors for the evasion of personal responsibility by neglecting to apply the maxim *delegata potestas non potest delegari* to any and all cases to which it has heretofore been applied by this court."

In Lyon *vs.* Jerome 26 Wendall (N. Y.) 485, the court says:

"In all cases of delegated authority, where the delegation indicates any personal trust or confidence reposed in the agent, and especially where such personal trust is implied by making the exercise and application of the power subject to the judgment or discretion of the agent or attorney, the general rule is, that these are purely personal authorities, incapable of being again delegated to another, unless a special power of substitution be added. From an early period of our law, this rule has been laid down as to powers given by will or deed to executors, trustees, and attorneys, to sell lands, make leases, etc.; and modern decisions have extended the principle to the less formal appointments of factors, brokers, and other commercial agents. How much more strongly then must reason and policy of the rule apply to the delegation of authority by the State, to its high public officers, made with the solemnity of a legislative act?"

Again in *Birdsall vs. Clark* 73 N. Y. 73 we find the following: "If discretion and judgment are to be exercised either as to time or manner, the body or officer entrusted with the duty must exercise it and cannot delegate it to another officer or person."

My conclusion is, therefore, that Prof. Robinson in his office as State Assayer is charged with powers judicial and not ministerial and hence, cannot lawfully delegate those powers to another.

COUNTY COMMISSIONERS. ELECTION OF.

On November 23, 1906, an inquiry was submitted to us from the Governor and Council relating to the election of certain gentlemen to the office of county commissioner in Piscataquis county.

On November 24, 1906, opinion was rendered as follows:

As a preliminary and by way of making my opinion more clear, allow me to sketch the history of the legislation of county commissioners in this State in a brief way.

Under an act approved March 10, 1831, it was provided that the governor with the advice and consent of the council, should appoint three suitable persons as county commissioners in each of the several counties of the State. These appointees were to hold office for the term of four years unless sooner removed by the governor and council. In the revision of the Statutes published in 1841 the act of 1831 remained in force but the following year by an act approved February 22, 1842, it was provided that the county commissioners should be elected at the annual meeting in September for the election of their State and county officers. In the last named act it was provided that the county commissioner having the highest number of votes should hold office three years. The one with the next number, two years, and the one with the smallest number, one year, with provision as to procedure if two or more should have an equal number of votes. In the last named act it was also provided that all vacancies occasioned by expiration of term of office should be filled by the election of a successor on the second Monday of September next preceding such expiration. This act also provided for the election of other county officers and used the following language in respect to all such county officers including county commissioners: