

# 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, 1910.

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## OFFICE OF THE ATTORNEY GENERAL.

WATERVILLE, ME., July 15, 1909.

*Subject:* P. L. 1907, Chap. 93. Returns to State Assessors by Registers of Deeds.

*Board of State Assessors, Augusta, Me.*

GENTLEMEN:—You have called my attention to Chap. 93, Sec. 1, P. L. 1907, which provides as follows:

“In each county containing wild lands, so called, it shall be the duty of the register of deeds in such counties to transmit to the board of state assessors a certified copy of the record of transfers of wild lands or any portion of wild lands within ten days after such record is made.”

You state that in several of the so-called wild land counties the respective registers of deeds have not transmitted the certified copies required by said chapter and that in two instances the registers have flatly refused to comply with this provision of law. You asked me what measures, if any, may be taken and in reply I beg leave to say:

Your remedy is by mandamus. It is a general rule of law that the writ of mandamus may be issued against a public officer to compel him to perform a purely ministerial duty imposed by law. This doctrine is not only announced by many of the state courts but also by the Federal courts of this country and by the courts of Canada and England. In our own state examples are not wanting where this writ has been issued to compel a public officer to perform a ministerial duty imposed upon him by law. Thus in *Smyth v. Titcomb* 31 Me. 272, the defendant being a treasurer of a town, mandamus was issued to compel the treasurer to perform a duty prescribed and imposed by statute. See also *Tremont School District v. Clark* 33 Me. 482; *Williams v. County Commissioners* 35 Me. 345, where the court speaking through Rice J. says: “Mandamus lies to the inferior tribunals; magistrates and officers and extends to all cases of neglect to perform a legal duty where there is no other adequate remedy;” *Baker v. Johnson* 41 Me. 15, where the court speaking through the same judge declared that the Supreme Judicial Court had power to issue a writ of mandamus when the same may be necessary for the due execution of law; *Page Petr.* 37 Me. 553; *Hawes et alii v. White, Register of Deeds* 66 Me. 305; *State v.*

County Commissioners 83 Me. 282; Attorney General v. Newell et alii 85 Me. 246, where the court speaking through Whitehouse J. says:

"It is a well settled rule that mandamus extends to all cases of neglect to perform an official duty clearly imposed by law when there is no other adequate remedy;" Inhabitants of Brunswick v. City of Bath, 90 Me. 479; in this case the defendants contended that the petitioner had a complete and adequate remedy at law either by indictment or by petition to the county commissioners but the court speaking through the late Chief Justice Peters says: "Such a legal remedy as either of the uncertain modes suggested would be unsuitable and unsatisfactory. This court has said that mandamus will be granted if it be doubtful if there be another effectual remedy, or if the court does not clearly see its way to one. \* \* \* Generally when ministerial duties are clearly defined and legally established mandamus will be upheld to enforce them;" Adams v. Ulmer 91 Me. 47; Keefe v. Donnell 92 Me. 151; Hamlin, Attorney General v. Higgins et alii 102 Me. 510.

Examination of these several cases and applications of the principles of mandamus therein contained seem to make the proposition perfectly plain that this is the remedy to be applied to the case which you present.

Respectfully yours,

WARREN C. PHILBROOK,

*Attorney General.*

OFFICE OF THE ATTORNEY GENERAL.

WATERVILLE, MAINE, Dec. 18, 1909.

*Subject:* Taxation of personal property of non-residents.

*Hon. George Pottle, Augusta, Me.*

SIR:—I have your favor enclosing the following statement of facts and inquiry:—

"John Doe, an inhabitant of the town of "A," purchases the standing timber on a parcel of land in the town of "B." He moves a portable mill upon the land for the purpose of sawing the logs when cut.