STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1918

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2. That their rules for the protection of public health have a real substantial relation to that object.

3. That their rules are directed primarily to preventing the spread of such diseases among the inhabitants of localities and are reasonable rules for that purpose.

4. That their rules do not discriminate against any particular class of amusements or gatherings.

Yours very truly,

FRANKLIN FISHER,
Assistant Attorney General.

PUBLIC RECORDS—USE OF CARD SYSTEM BY TAX ASSESSORS.

25th April, 1917.

Board of State Assessors, Augusta, Maine.

GENTLEMEN: Your inquiry as to whether it is sufficient for assessors of towns to use a card system or separate valuation book upon which actual description of real estate to be assessed is set forth with reference thereto incorporated in the general record or list of assessment, has been given my careful consideration.

Section 85, Chapter 10, Revised Statutes provides:—

"The assessors shall assess upon the polls and estates in their town all town taxes and their due proportion of any state or county tax, according to the rules in the latest act for raising a state tax, and in this chapter; make perfect lists thereof under their hands; and commit the same to the constable or collector of their town, if any, otherwise to the sheriff of the county or his deputy, with a warrant under their hands, in the form hereinafter prescribed."

Section 88, Chapter 10, Revised Statutes, provides:—

"They shall make record of their assessment and of the invoice and valuation from which it was made; and before the taxes are committed to the officer for collection, they shall deposit it, or a copy of it, in the assessor's office, if any, otherwise with the town clerk, there to remain; and any place, where the assessors usually meet to transact business and keep their papers or books, shall be considered their office."

There is a distinction between a "perfect list thereof under their hands" required by Section 85, and the "record of their assessment, etc.," in Section 88. *The perfect list of assessment upon polls and estates in their town of all town taxes and their due*

proportion of any state or county tax must be under the hands of the assessors, that is, *signed by them.* The record of their assessment and of the invoice and valuation from which it was made *is not required by statute to be under their hands.* Such record, however, or a copy thereof *must be deposited by them* in the assessors office, if any, otherwise with the town clerk before the taxes are committed to the constable or collector of their town for collection.

Cooley on Taxation, 3d Edition.

"An assessment **** is required as the first step in the proceedings against individual subjects of taxation and *is the foundation of all which follow it.* The assessment is, therefore, the most important of all the proceedings in taxation and the provisions to insure accomplishing its office are commonly very full and particular. The assessment being so important the statutory provision respecting its preparation and contents ought to be observed with particularity **** *If officers instead of observing them may substitute discretion of their own* the most important security which has been devised for protection of citizens in taxation might be rendered valueless." (Page 597.)

"An assessment of land cannot rest in parole for *a definite record evidencing official action is essential.*" (Page 601.)

"In listing the land it must be described with *particularity* sufficient to accord the owner means of *identification* and not to mislead him." (Page 740.)

"The *evidence of identity* is the record which *contains the description and fixes the duty.*" (Page 742.)

"The assessment must depend on *the records* of the assessors office and not upon *parole testimony* or the *private duplicate* of the assessor." (Page 743.)

"The result of the action of the assessors is embodied in the *assessment list,* **** and as the purpose is to supply *record evidence* that in the performance of their duties the assessors have obeyed the law, the compliance with the statutory direction has generally been held imperative." (Pages 759, 760.)

Our Court in this State draws a distinction in the matter of description of real estate in assessor's list between enforcing the collection of taxes by suit and forfeiture of the property for non-payment.

In Cressey vs. Parks, 76 Maine 534, Peters, C. J. says:—

"The alleged illegality consists in the assessors taxing the property in a list which gives merely the number of acres of real estate without further identity or description. The description is good enough for the collection of taxes by suit. *If the whole property might thereby be forfeited for an*

ordinary assessment, the result would be otherwise. To prevent forfeiture strict construction is not unreasonable.''

Our Supreme Court in Baker vs. Webber, 102 Maine 419, speaking through Justice Whitehouse says:—

''When a *forfeiture of land* is sought for non-payment of taxes assessed thereon, it must appear that there has been *strict compliance with the statute* upon which the alleged tax title is found. **** ''

''The statute provides 'that the assessors shall make a *record* of their assessment and of the invoice and valuation from which it was made,' etc. In this case at the close of the assessors' record there is a certificate that the 'foregoing pages contain a list and valuation of polls and estates, real and personal, liable to be taxed,' etc. But there is nowhere in the *record* a positive statement that they have assessed, etc. ***** the amount voted and raised. ******. It is true that in actions to recover taxes *not involving a forfeiture of the entire estate* upon which the tax is assessed, *it has been held that in the absence of such a record of the assessment signed by the assessors,* the warrant committed to the collector being an original paper, complete in itself, may be sufficient proof of the assessment. But if it be conceded that this rule could properly be extended to cases involving a forfeiture of the property for non-payment of the tax upon it, *the record* here fails to show that the papers committed to the collector, signed by the assessors were accompanied by *any list* comprising an assessment of a tax upon the defendant's land. If any *list* of assessment was in fact committed to the collector, there is nothing *in the record signed by the assessors* showing what the list comprised.''

Again the Supreme Court in Topsham vs. Purinton, 94 Maine 358, says:—

''It is true that this record is not required to be under the hands of the assessors; a copy will answer; but the original must appear to have been *under the hands of the assessors,* and this the record fails to show.'' In this case of Topsham vs. Purinton, the question at issue was the correction of a list by virtue of Section 10, Chapter 3, Revised Statutes of 1903, and the Court says: ''In order to make the healing provisions of this section applicable there must first be an *assessment under the hands of the assessors.''*

These authorities cited indicate to me that in order to create a valid tax title by the forfeiture of land for the non-payment

of a tax, the statutory provisions applicable must be strictly construed and strictly complied with. It is the custom, I understand, for the assessors of towns to combine the "perfect list" with the "record" in a book called a valuation book signing the same at the end and thereby making a perfect list and record both "under their hands." This is the form of record of assessment which has been before our Courts for consideration in the cases appearing in our reports bearing upon this question. And our Court has held that such a record is itself final and from it alone without evidence aliunde must be determined what was assessed.

In Sweetsir vs. Chandler, 98 Maine 152, our Supreme Court says:

"In determining what was assessed in the first place, we can be governed not by what the assessors intended to do, nor by what they thought they did do but by what they did do. And in determining what was done by them we are controlled by the official record of their doings, that is, by the assessment itself. The assessment cannot be modified or limited by evidence aliunde."

The record, that is, the signed "perfect list" and the record thereof, if the combined list and record are used, and on the other hand the list alone under the hands of the assessors must, it appears from the authorities contain a sufficient description of the land taxed to afford the owner means of identification of the land which is assessed. This "record" must be complete, must itself show just what is assessed and the amount of assessment thereon and according to Sweetsir vs. Chandler, supra, no outside evidence of any sort will be accepted to modify that record. The term "assessment" applies to this "record."

If the description of the real estate was contained in a separate valuation book or on a separate card and is not written into the "perfect list" or in the combined valuation book containing both the "perfect list" and "record", it would be necessary to resort to evidence aliunde in order to prove that the card containing the description or the separate valuation book was in fact the card or book referred to in the "record", that is in the list and record otherwise called the valuation book signed by the assessors. Such evidence aliunde is not admissible. The record must stand alone.

The Courts will not go beyond the record itself. A mere

reference in the "record" to some other book or to some card unless it be sufficient in itself to give a description of the property which "will afford the owner opportunity of identification" is all that the Court will consider and the plan suggested, of course, contemplates only the reference in the "record" and not a sufficiently complete description.

It is, therefore, my opinion that the use of a card system or separate valuation book for carrying the description of real estate and making up the assessment by assessors of towns is not a safe and proper method. And a complete description of all parcels of real estate upon which the tax for any year is assessed should be actually written into and made a part of the valuation book which they annually fill in and sign. Such valuation book may consist of more than one volume, however, if it appear that the several volumes, each are a component part of the whole. It is safer, however, to have each and every volume of the valuation list and record signed and identified as one of a number of volumes making up the complete valuation list and record.

Very truly yours,

GUY H. STURGIS,
Attorney General.

TAXATION—LIABILITY TO TAXATION OF DEPOSITS BY MAINE CITIZENS IN NEW HAMPSHIRE SAVINGS BANKS.

21st March, 1918.

Board of State Assessors, Augusta, Maine.

GENTLEMEN:

In Re: Taxation of Savings Banks

We have carefully considered the question submitted by you in your letter of the 5th, asking whether Maine exempts from taxation the deposit of a citizen of Maine in a savings bank in New Hampshire.

Chapter 10, Section 5, R. S. 1916, is a list of personal estate subject to taxation in this State and it includes within its terms "money at interest." Undoubtedly the deposit of one of our citizens in a New Hampshire savings bank is money at interest.

Chapter 10, Section 14, paragraph 10 is a statement of cer-