

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1918

MERRILL & WEBBER CO., AUBURN, MAINE

PRINTERS AND BOOKBINDERS

Section 41 of Chapter 7, R. S., apparently is the original provision governing the determination of the results of an election and must control except in so far as it is modified by Section 53, of the same chapter which is in fact a provision definitely directed to the question of correction of returns and historically is supplemental to section 41 both in matter of substance and in date of enactment.

In reply to your inquiry as to the proper procedure for the Governor and Council to follow I will therefore say that if it is established as a fact that the person receiving the highest number of votes for Register of Deeds of Knox County was in fact a member of the board of registration of the City of Rockland at the time the election was held, such person should not be declared elected and an affirmative finding should be made that upon hearing it appeared to the Governor and Council found that such person was ineligible and that no person eligible to the office had received the requisite number of votes to elect him and therefore the Governor ordered a new election of a Register of Deeds for Knox County.

Very truly yours,

GUY H. STURGIS,

Attorney General.

BRIDGE LAW—APPLICATION TO CASE WHERE ONLY
ONE OF TWO TOWNS INVOLVED WILL HAVE TAX
RATE IN EXCESS OF FIVE PER CENT.

July 25, 1917.

*Paul D. Sargent, Chief Engineer, State Highway Commission,
Augusta, Maine.*

DEAR SIR: Your request for a construction of Section 5 of Chapter 319 of the Public Laws of 1915, appearing in the appendix of the Revised Statutes of 1916 has had my consideration and I will say:

You state that the particular situation or state of facts presented is that the construction of a bridge between two towns on a main thoroughfare, which is also a state or state aid highway, should be built or rebuilt and that the proportion of the cost of construction thereof which one of the towns would legally bear,

will in addition to the other highway taxes of that town, make a tax rate in excess of five mills. But in the case of the town on the other side of the river, the proportion of the cost of construction, etc., will not in addition to other highway taxes of that town make a tax rate in excess of five mills. And for your first question you ask whether or not the town which will not have a tax rate in excess of five mills by reason of the proportion of the cost of construction of the bridge which it would legally bear is entitled to the benefits of this act.

Section 5 of Chapter 319, P. L. 1915, provides:

“All the foregoing provisions shall apply to either or all towns in the same county or to either or all towns in different counties, and to the county or counties when a bridge is to be built or rebuilt, which crosses the boundary line between said towns or between said towns and said counties and the proportion of the cost of construction which either town would legally bear under agreements or legislative enactments in effect January first, nineteen hundred seventeen, will in addition to the other highway taxes of said town make a tax rate in excess of five mills. In such cases the municipal officers of each of said towns and the commissioners of each of said counties shall sit upon the board provided for in section two and all plans and specifications shall be approved by a majority of said board. Notice of complete cost of construction shall be forwarded to each town and each county interested. The proportional parts of the cost to be borne by the towns or by the counties under the provisions of section one of this act shall be apportioned between said towns and between said counties in proportion to their valuation last made by the board of state assessors, in absence of any legal agreement or legislative enactment in effect January one, nineteen hundred seventeen, regulating such division of cost.”

It is my opinion that this section explicitly provides for just such a situation as you have presented and that it was the plain intent of the legislature to provide by the language it used that bridges might be built and the highway system properly promoted and perfected even though one of the towns was not strictly speaking and without the force of this section, within the general provisions of this act.

The section provides that all the foregoing provisions shall apply to either or all of the towns, etc., when a bridge is to be built or rebuilt which crosses the boundary line between said towns and the proportion of the cost of construction which *either town* would legally bear, etc., will in addition to the other highway taxes of said town make a tax rate in excess of five mills.

There is nothing in this act or other statutes now in force which would indicate that the legislature intended to use any language other than which appears in the act itself. There is nothing to indicate that they did not intend the words used therein should have their usual and ordinary and well understood meaning. To change the order of expression, this section may be read that if either town would with its proportion of cost of construction of a bridge in addition to other highway taxes have a tax rate in excess of five mills when a bridge between two towns should be rebuilt or constructed then all the foregoing provisions of the act shall apply to either or all of said towns, or in other words, either or both of said towns. This is the apparent intent of the legislature as expressed by the act it passed. Even though one of the towns will not have a rate of tax in excess of five mills by reason of the construction of the bridge, nevertheless, by the terms of this act such town is entitled to the full benefit of the act and liable for all the duties and obligations therein imposed. The section further applies to counties involved and such counties, either or all, are entitled to any benefit and obliged to perform any duty within the provisions of the act preceding this Section 5.

The municipal officers of each of said towns and the commissioners of each of said counties shall sit upon the board provided for in Section 2 of the Act.

If the state highway commission shall act under Section 2 of Chapter 304 of the Public Laws of 1917 and deem that such bridge, being on a state or state aid highway, must be built or rebuilt, and shall take the initiative and call a meeting to consider whether public convenience and necessity require the building or rebuilding of such bridge, they must call into this meeting as a part of said board provided for by the act, the municipal officers of each of the towns involved and the county commissioners of each and all of the counties involved and such officers with the state highway commission will constitute a full board and the decision of a majority thereof will be final and conclusive in matters properly coming before such board. The amendments to the first four sections of the original act made by the legislature of 1917 in Chapter 304 of the Public Acts of 1917 are all applicable to towns and counties specified in Section 5 of the original act and such amended section should be at the present time dealt

with as if a part of the original act so far as Section 5 is concerned.

If such construction to this section were not given it would be possible for a town not entitled to the benefits of the act to prevent the town on the opposite shore from receiving the benefits of the act and also would permit a town not entitled to block proper and necessary bridge construction and repair. This act was designed to improve and make uniform the bridges of our State as well as relieve the burden of expense to the towns.

Yours very truly,

GUY H. STURGIS,

Attorney General.

BATH MILITARY AND NAVAL ORPHAN ASYLUM—
LIABILITY TO TAXATION—AMENDMENT OF GENERAL STATUTE BY PRIVATE AND SPECIAL LEGISLATION.

28th December, 1917.

Hon. Carl E. Milliken, Governor of Maine, Augusta, Maine.

DEAR SIR: We have papers submitted to this office relating to a tax assessed against the Bath Military and Naval Orphan Asylum by the City of Bath under authority of Chapter 199, Private and Special Laws of 1913.

It appears that the Bath Military and Naval Orphan Asylum is a state institution. It further appears that under Chapter 10, Section 6, paragraph 1, R. S., the Bath Military and Naval Orphan Asylum was exempted from taxation. Chapter 199, Private and Special Laws of 1913, contains the following language:

“The assessors shall include such assessment in the tax law and warrant committed by them to the collector of taxes for that municipal year and it shall be included in the annual tax bill or if the estate is otherwise exempt from taxation it shall be rendered as a special tax bill.”

It is claimed by the City of Bath that the words “or if the estate is otherwise exempt from taxation, it shall be rendered as a special tax bill” is an amendment to Chapter 10, Section 6, paragraph 1, R. S., and authorizes the City of Bath to levy a tax against the Bath Military and Naval Orphan Asylum. There is no question but that a Private and Special Act can amend the Revised Statutes but the general rule is if a Private and Special