

MAINE STATE LEGISLATURE

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December 1, 1923

To Honorable Percival P. Baxter, Governor of Maine
Re: Railroad Tax

Answering your inquiry in regard to the interpretation of Section 75 of Chapter 9, relating to the collection of taxes against railroads, I wish to say that in my opinion the statute is directory only and does not mean that the officer charged with collecting taxes is compelled to add and collect interest in all cases.

In the construction of statutes such as require to be obeyed under penalty of having proceedings under them declared void, the courts have uniformly construed such statutes to be mandatory.

The term "mandatory" is applicable almost entirely to statutory requirements intended for the protection of the citizen and to prevent a sacrifice of his property, and by a disregard of which his rights might be, and generally would be, injuriously affected. It does not apply to statutory requirements intended for the guide of officers in the conduct of business devolved on them and designed to secure order, system and dispatch in proceedings, and by a disregard of which the rights of the parties cannot be injuriously affected. See Words and Phrases, Vol. 3, page 262.

In the case of Helms vs. Vaughan, 5 S.E. 704, 84 Va. 696 cited in Words and Phrases, Vol. 3, page 2078, it was held:

"A statute directing the mode of proceedings by public officers is to be deemed directory, and a precise compliance is not to be deemed essential to the validity of proceeding under it."

See also People vs. Cook, 8 N.Y. 87.

Mr. Justice Potter is quoted with approval in the 84th Virginia above referred to as follows:

"There is a class of cases which hold that whether a statute is to be regarded as directory or not, is made to depend upon the employment or failure to employ negative words which import that an act shall be done in a particular manner or time and not otherwise."

On authority of the above mentioned cases, and because in my opinion the legislature intended to give the collecting officer power to hasten the payment of delinquent taxes and not to penalize tax payers unnecessarily, I am advising you that the collecting officer may add and collect interest, but is not obliged to, under the law.

Ransford W. Shaw
Attorney General