

MAINE STATE LEGISLATURE

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November 25, 1925

To Board of State Assessors

Re: Casco Mercantile Trust Company Tax Return

Note: Neither the return nor the Bank Commissioner's letter, referred to below, is in the file; but a note on one of the numerous citations attached to the opinion shows that the Trust Company switched assets immediately before and after the date of tax assessment from cash to bonds and back again.

I have considered to some extent the above matter and the law relating thereto.

As it now stands there is some question as to the best method to be employed in order to reach a decision as to whether or not the practice of the Trust Company, as stated in the report to your Board under date of November 13, 1925 by the Bank Commissioner (is lawful). If the transactions of the Company as stated by the Commissioner were for the purpose of evading the state tax, I am of the opinion that the court would hold that the same was unlawful. At the present time it would be somewhat difficult to get the matter before the court except possibly by a proceeding against the person making the return on the part of the Trust Company under the provisions of Chapter 144 of the Public Laws of 1923, which provides:

"For wilfully making a false return, the treasurer of the corporation forfeits not less than five hundred nor more than five thousand dollars."

From the information that has come to me it appears that this practice of transferring stock has been carried on for quite a period of time, evidently because the Trust Company considered that they were within the law.

I do not find in the statute any provision authorizing the Board of State Assessors to assess a supplemental tax, and having made the assessment against the Trust Company for the six months ending September 26, 1925, there is doubt as to the power of the Board to amend its return at this time because of error in the assessment.

It is my opinion that the best way to secure a decision of the matter by the court will be to make the next assessment including therein any and all property transferred in such a manner as to indicate that the transfer was for the purpose of evading the State tax. It seems to me that it would hardly be advisable to proceed against the treasurer for wilfully making a false return for the six months preceding the last Saturday of September, 1925.

Sanford L. Fogg
Deputy Attorney General