

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1941--1942

I find in the second paragraph of Chapter 270, P. L. 1933, that the two-dollar fund was designed for the furthering of emergency tuberculosis work within the sanatoriums, or private and semi-private hospitals. Under the circumstances, the taking over of a municipality by the Emergency Municipal Finance Board would, in some cases, reduce the income provided for this particular work unless the Legislature had set up a source from which recovery could be made.

These persons are certainly unemployables and in those cases where the municipality has been taken over by the Board, if the Board is unable to make the \$2 payments from the income of the municipality, the Health and Welfare department may very properly consider said amount as a part of the funds it shall advance for the relief of the municipality.

Very truly yours,

FRANK I. COWAN

Attorney General

March 3, 1941

Carl R. Smith, Secretary  
Farm Lands Loan Commission  
Augusta, Maine

Dear Sir:

I have had an examination made of the records of the Town of Charleston to learn the status of the tax deeds and lien certificates acquired by said town against certain Thayer property on which the State of Maine, through the Farm Lands Loan Commission, had a mortgage. In considering this matter and acquiring this information, I disregarded entirely the fact that the State of Maine is the mortgagee because my feeling is that the State, through placing itself in such a position, should not force a reduction in the income of the town from its taxes.

You understand, of course, that the State is not liable for taxes at all and that where the State has placed a mortgage the town cannot legally cut away the rights of the State by tax deed or lien, or in any other way except by consent of the Legislature. I feel, however, that the State should conduct itself like any other mortgagee and should pay any properly assessed taxes on lands on which it has taken a mortgage as long as those lands are in the possession of the mortgagor, or those claiming under him.

When the State actually takes over the property by foreclosure of its mortgage, then no tax can be properly levied against the land, and so no tax is legally payable on the land. When no tax is legally payable on the land either, (1) because of faulty assessment or, (2) because the State has itself acquired both legal and equitable title,

it is in my opinion improper for the State through its Farm Lands Loan Commission to pay out of trust funds amounts claimed due for taxes.

The State's mortgage was dated January 18, 1930. Foreclosure proceedings were started in August, 1932, and the equity of redemption expired in August, 1933. The first tax deed was dated July 1, 1935 and was a sheriff's deed based on action brought against Arthur L. Thayer in the Superior Court for Penobscot County, returnable at the September Term, 1934. This was to enforce payment of the 1933 tax. The writ was dated April 12, 1934, and the real estate was attached on April 20, 1934.

On the facts as given above, no tax could be legally assessed against the property after August, 1933. The sheriff's deed was for the collection of a tax assessed before the expiration of the equity of redemption. There are some defects in the procedure but not of such matter that we can feel absolutely certain the deed would be held invalid by the courts if the mortgagee had been someone other than the State. Under those circumstances, it is proper for the Farm Lands Loan Commission to pay the amount of that tax as consideration for a quit-claim deed from the town.

The State is not in any way liable for any taxes subsequently laid. However, the arrangement made to share with the town a part of the income as provided in the 1939 amendment is proper and should be continued.

Very truly yours,

FRANK I. COWAN  
Attorney General

March 3, 1941

C. S. Robinson  
Administrative Director  
State Military Defense Commission  
Augusta, Maine

Dear Sir:

Your letter of February 26th, containing copy of a letter from Mr. Gates, Chairman of the Board of Selectmen of Millinocket, is received.

In connection with the institution of condemnation proceedings at Millinocket Airport, a ruling is asked from the Attorney General as to whether the municipal officers of the town can proceed against the land, a part of which appears to be in unorganized territory,