

# 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

Municipalities are not liable for injuries occurring to persons when those persons are availing themselves of the governmental functions of a municipality. Carrying on a school is such a function.

As to the possible liability of individual teachers, it must be apparent that the answer must lie in each specific case, and that a teacher can be liable only for negligence directly attributable to him.

Very truly yours,

FRANK I. COWAN  
Attorney General

March 20, 1941

Elmer W. Campbell, D. P. H.  
Chief Clerk, Board of Barbers and Hairdressers  
State House  
Augusta, Maine

Dear Doctor Campbell:

I have your communication of March 20th, in regard to application of P. L. 1937, Chapter 190, Section 21, in cases where towns have increased in population so that they are now in excess of 1000.

You have no option except to require that persons operating barber shops in towns having a population of over 1000 according to the last census shall secure licenses.

The date January 1, 1938, is restrictive and you have no authority to set a later date at which an application for a license can be filed.

Very truly yours,

FRANK I. COWAN  
Attorney General

March 25, 1941

From:  
Frank I. Cowan, Attorney General  
To:  
Hon. James K. Chamberlain, Chairman  
Joint Committee on Taxation

I have been asked to give an opinion of the constitutionality of a statutory provision placing a different rate of taxation on realty from that assessed against personalty. The State Constitution, Article IX, Section 8, reads as follows:

“All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof.”

This language seems, at first glance, to allow for a difference in classification between real and personal property. However, in 68 Maine, Page 586, we find an opinion of the Justices bearing on this question which certainly justifies the conclusion that no such distinction in classes was intended. The Justices call attention to the fact that certain taxes are for the benefit of *all* of the people and that *all* of the property of the State is assessed, therefore, according to its valuation.

The Court has discussed this question of the constitutionality of certain tax legislation in the cases of *Sawyer v. Gilmore*, 109 Maine, Page 169, *Keyes v. State*, 121 Maine, Page 306, *Manufacturing Company v. Benton*, 123 Maine, Page 128, and also *Water Company v. Waterville*, 93 Maine, Page 594. In none of these cases has the exact point been raised, but the courts have uniformly held that it is *all* the property of the State which is to be taxed for the purpose of raising money for the benefit of *all* the people.

Under the circumstances there can be no question but what the courts would rule that any statute attempting to differentiate between the proportion of a tax to be paid by realty and personalty would be invalid.

Respectfully yours,

Attorney General

March 27, 1941

From:

The Attorney General

To:

William D. Hayes, State Auditor

In re Railroad Taxes.

I have given thoughtful consideration to your memorandum of March 13, 1941, in regard to the apportionment of railroad taxes to the municipalities, and have discussed it with persons who are acquainted with the history and the facts.

Section 29 of Chapter 12 of the Revised Statutes provides for the apportionment "to the several cities and towns in which, on the first day of April in each year, is held railroad stock of either such *operating* or *operated* roads." This very subject is covered by the opinion of the Justices appearing in 136 Me. 529, in which Judge Dunn says: "The language of this constitutionally valid statute is plain and unambiguous; adherence to its obvious meaning, which is not devoid of purpose, would lead neither to injustice nor to contradictory provisions."