

MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL



for the calendar years

1941--1942

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."

Here we have a statute expressly referring to and providing for apportionment of stock of operating and operated roads, and it is very clear that the legislature intended apportionment to be on the basis of capital stock held in both types of road.

This opinion is given further force by the history of the railroads and of this legislation. When the railroads were constructed the municipalities contributed heavily to their construction, but the State contributed comparatively nothing. The purpose of this legislation was to try and return to the municipalities, to some extent, some of the money they had invested in the railroads.

FRANK I. COWAN

Attorney General

April 1, 1941

Frederick G. Payne, Esquire
Commissioner of Finance and
Budget Officer
State House

My dear Fred:

I have your letter of March 21st, in regard to the State Trust Funds. The State has always regarded itself in the light of a real trustee, and has usually accepted complete responsibility as insurer of these funds. It has not always gone the whole way, however, as insurer. For instance, when, through improper conduct, the Hebron Sanatorium lost the Hill fund of \$200,000 in 1915, the State did not accept the responsibility and restore the fund.

The majority of these funds are out right gifts to the State or to the institutions and, under such circumstances, we are in no danger of losing them through legal action. Some, however, and I am not prepared to say offhand which ones, are endowments so created that failure to conform to the wishes of the giver will endanger the fund itself.

Where the condition of the gift has been that the State would guarantee a certain amount of interest annually, or that the State, in lieu of interest, appropriate a certain amount of money which would be the equivalent of four, five or six percent, any failure on the part of the State to conform to the terms of its contract will jeopardize the fund. If, however, the amount of the appropriation has been figured as, approximately, four, five or six percent of the principal of the fund, and there was no condition in the gift that any such sum of money should be raised by the State annually, failure to appropriate such an amount in any one year cannot weaken the legal rights of the State in the principal. Moreover, where the State has itself created a fund it can thereafter do with it as the legislature sees fit because, unless I