

# 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

From:  
John S. S. Fessenden, Assistant Attorney General

June 2, 1942

To:  
Charles P. Bradford, Field Man  
State Park Commission

You state that you have been notified by a representative of the Bureau of Internal Revenue that a tax is required on persons visiting a State Park who pay a fixed amount which the State has set to help offset a part of the cost of maintenance. Your question is whether or not the State is liable to pay the Federal tax on admissions, which tax is at the rate of 1¢ for each 10¢ or fraction thereof of the amount paid for admission to any place.

The facts in connection with the State Parks, so-called, as presented to this office, appear to be as follows: The State of Maine operates and maintains certain recreational areas under a Cooperative and License Agreement between the United States of America and the State of Maine. The full details of the license appear in an Agreement signed May 9th, 1939, by H. A. Wallace, Secretary of Agriculture of the United States of America and executed under authority of the action of the Governor and Council of the State of Maine on January 14th, 1939 by the Secretary of the Maine State Park Commission. Among other things it is provided in the Agreement that "The State shall operate, maintain and administer the existing and subsequently developed recreational facilities for the use and benefit of the general public; any fees charged for such public use to be non-discriminatory and consistent with the public-non-profit character of the areas." It is also provided that if the annual income and revenue received by the State from the "use and operation" of the property exceeds the annual cost to the State of operating the property, the United States may hold a conference to determine:

(a) The rental to be paid during the remainder of the term of the license;

(b) The sums which should be paid by the State to counties or other local governmental subdivisions of the State; and

(c) The use to be made of any such excess income which has been accumulated.

All income received from the "use" of the property shall be paid into the State Treasury and impressed with a trust for making repairs and replacements on the property and for effectuating the purposes set forth in Section 2 of the license and of certain other purposes all of which are subject to the control of the United States of America.

Whether or not the income from the property provides for its proper maintenance, it appears that the State has a duty to appropriate funds for maintenance purposes and that if it fails to do so, the United States shall have a right to terminate the license.

Any publicity given to the project must state that the program was conducted on land acquired and developed in connection with the land conservation and land utilization program of the United States Department of Agriculture.

The State is obliged to submit its plan of operation and development biennially to the United States and to furnish any information in regard to the use of the property as may be requested from time to time.

The license is revocable by the United States at any time on twelve months' notice and, at the time of termination, the State may remove only such "improvements which have been erected exclusively with funds specifically appropriated by the State Legislature and which have not been erected in any part with funds derived from income from the use of the property". If such removable improvements have not been removed within eighteen months from the date of termination, the title to such improvements is to vest in the United States.

The entire duty of the State of Maine, as the licensee of the United States of America, is specifically set forth in full detail in the license agreement. At no place is it provided that the State of Maine shall pay any taxes in connection with the operation, maintenance or use of the property. At no place does it appear that the State of Maine shall profit from the use of the property. Any benefit that there may be to the State of Maine is indirect in that its citizens, as well as the citizens of all other States, may benefit from the use of a public recreational area. The State has not agreed to collect from any persons any taxes, nor has it assumed the duty under the license to remit any taxes to the United States of America. At no place does it appear that the State is entitled to make a charge for admission to the recreational areas, but it is specifically agreed that charges may be made on a non-discriminatory basis for the "use" of facilities furnished.

This office is informed that with the exception of the recreational area in the Sebago region, there is in fact no admission charge to the recreational areas, and that in connection with the Sebago region, while there appears to be an admission charge, such charge is not in fact a charge for admission but is, on the contrary, a charge for the "use" of the public property. The entrance to the Sebago area is over a road approximately two miles in length, which road leads to privately owned property as well as the public recreational area. Persons passing over and upon this road to privately owned property pay no fee. Persons passing over and upon this road for the purpose of visiting the area but who do not desire to use the facilities of the area, pay a fee of 10c, which fee is returned to them upon leaving the area if they leave within one hour and do not use any of the facilities other than the road. It appears, therefor, that the use of the word "admission" on vouchers used in connection with the use of facilities offered in the recreational areas is actually a misnomer and should be discontinued.

You are advised that under the terms of the license agreement the State of Maine, by and through the Maine State Park Commission, has not assumed the duty or obligation to collect any taxes for the United States of America; that as a matter of fact there appears to be no admission charge to which the Federal tax would apply even if it could apply to the State of Maine; that the State of Maine is merely the licensee of the United States of America under a license agreement obviously constituting the State of Maine the agent of the United States of America; that as such agent the State of Maine need not assume any duty other than the duty imposed by the Agreement and that, therefore, if any tax is collectible or payable, derived from the use of the property, that it will be necessary for the United States of America, as principal, to arrange for the collection and payment of its own taxes.

Assistant Attorney General

June 2, 1942

From:  
Frank I. Cowan, Attorney General

To:  
George E. Hill, State Tax Assessor

Under date of May 25th, 1942, you inquired as to the levying of a tax upon Cumberland County Power & Light Company or Portland Railroad Company, the former of which companies operated a street railroad under lease from the latter, but which street railroad was discontinued as such on or about May 4th, 1941.

The tax about which you inquire is provided for under the provisions of Sections 29 to 35 of Chapter 12 of the Revised Statutes, as amended by Chapter 99 of the Public Laws of 1941.

It appears that the tax is levied on April 1 of each year against every corporation operating a railroad for the privilege of exercising its franchise. Street railroad corporations which own or operate a street railroad are subject to the tax.

Under the facts presented by you, it appears that neither of these companies either own or operate a street railroad, although a street railroad was operated until approximately the 4th day of May, 1941.

If a tax is payable, the tax is ascertained or measured by the business done in the previous year. While it is a fact that the railroad was operated during a part of the previous year, to wit, 1941, it appears that no tax is payable in 1942 for the reason that the tax is imposed on the privilege of exercising the franchise. Since the franchise is not being exercised, it necessarily follows that it is not taxable.

Attorney General