

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

In Chapter 19, Section 78, there is a provision for school committees to agree to this, which would necessarily require a voluntary contract by the several parties, and under Section 2 of the same chapter, the statute reads that the school committee "may authorize the superintendent of schools to pay the board of students" under the circumstances set forth therein. The language is such that it is mandatory or compulsory upon the committee only if it sees fit to make the authorization.

It is true that the public school laws require a town to make provision for the maintenance of its schools for not less than 32 weeks annually. But the only penalty is the loss of State school moneys. Under our system of government, a great deal of control of municipal affairs is necessarily left with the individual in that municipality. If a citizen of a town should feel that his local government is not functioning according to law, and if he can prove that, he has a remedy which is not available to outside administrative bodies, unless express provision is made therefor by statute. There is no provision for such action in this case.

JOHN G. MARSHALL
Assistant Attorney General

April 6, 1943

To:
David H. Stevens, Assessor

Assessor

From:
John G. Marshall, Assistant

Attorney General

*Supplemental Tax on York Utilities Co.
History*

In 1903, the Atlantic Shore Line Railway was created by Chapter 175 of the Private and Special Laws. Amendments to the charter were made in 1905, P. & S., Chapter 241; in 1907, P. & S., Chapter 303; in 1907, P. & S., Chapter 439.

In 1911, P. & S., Chapter 39, the Act cites that certain individuals had purchased the assets of the Atlantic Shore Line Railway under order of sale by the United States Circuit Court and its decree pursuant thereto. The Act ratifies the sale and recites that the bonds, as described in the Act, shall be a binding obligation of the Atlantic Shore Railway which was the name of the corporation apparently organized under the General Laws for the purchase of the assets of the Atlantic Shore Line Railway. The Act ratifies and makes valid all of these acts by the newly created corporation. The Act further recites the right of the new corporation to enjoy all of the rights, franchises and privileges of the Atlantic Shore Line Railway.

On January 18, 1923, the holders of the refunding mortgage bonds of the Atlantic Shore Railway having foreclosed the mortgage securing the same, the United States District Court of Maine ordered a sale to the several named individual purchasers of all the assets of

the Atlantic Shore Railway and all of the powers, rights and franchises by reason of the original Certificate of Organization or by virtue of Chapter 39 of the Private and Special Laws of 1911. These several purchasers organized a new corporation under the General Laws of the State of Maine to be known as the York Utilities Company, the articles of incorporation of which provided that the corporation was to exercise the powers, rights and franchises held by the Atlantic Shore Railway either by virtue of its original certificate or by virtue of the provisions of Chapter 39 of the Private and Special Laws of the State of Maine of 1911.

On August 5, 1924, the purposes of The York Utilities Company were enlarged by an amendment to its charter by adding the following:

“And to buy, sell, own and operate motor vehicles commonly known as jitney busses or other vehicles over and along the streets and highways in the Town of Sanford or other towns in which said York Utilities Company's lines are located, and elsewhere, in connection with and auxiliary to its street railway lines, and to engage generally in the transportation of persons, merchandise, baggage and mail by electric railway, motor vehicle or other method of transportation, and also to buy, sell, own, operate or lease amusement parks, casinos or restaurants.

so that the purposes and objects of the corporation as altered and enlarged shall be as follows:

“To exercise all the powers, rights, privileges and franchises which the Atlantic Shore Railway possessed by virtue of its original certificate of organization and under and by virtue of the provisions of Chapter 39 of the Private and Special Laws of the State of Maine for the year 1911, and to buy, sell, own and operate motor vehicles commonly known as jitney busses, or other vehicles over and along the streets and highways in the Town of Sanford or other towns in which said York Utilities Company's lines are located, and elsewhere, in connection with and auxiliary to its street railway lines, and to engage generally in the transportation of persons, merchandise, baggage and mail by electric railway, motor vehicle or other method of transportation, and also to buy, sell, own, operate or lease amusement parks, casinos or restaurants.”

The charter was again amended on March 17, 1925 by adding the following, “to produce by hydraulic or other means and sell hydraulic power to incorporated places, manufacturers, and so forth in the Towns of Sanford, Alfred, Lyman, Kennebunk, Kennebunkport, and elsewhere.”

The York Utilities Company is presently in operation and on February 24, 1942 filed a return with the Public Utilities Commission of the State of Maine for the year ending December 31, 1941, which is known as a railway return. In this annual report, or return, the

York Utilities Company showed on page 302 thereof gross revenue from transportation as \$78,948.23. In the compilation of this total there are items to show the break-down and sources from which this revenue is received, and under Item 108 in the printed form, which is designated as "switching revenue," the word "Bus" is written in pencil. This department has been verbally informed by the State Tax Assessor's Department that the amount of money received under this heading was not switching revenue but earnings from the operation of the bus lines, amounting to \$39,881.87.

A question has arisen as to how the tax shall be computed against the York Utilities Company by reason of its being chartered to operate a railway in the State of Maine and by reason of its having received revenue from the operation of motor busses.

Opinion

Chapter 12, Section 35 of the Revised Statutes of Maine provides for the manner in which street railroad corporations and associations are to be taxed:

"Sec. 35. Street railroad corporations and associations are subject to the seven preceding sections and to section four of chapter thirteen, except that the annual excise tax shall be ascertained as follows: when the gross average receipts per mile do not exceed one thousand dollars the tax shall be equal to one-fourth of one per cent on the gross transportation receipts; and for each thousand dollars additional gross receipts per mile, or fractional part thereof, the rate shall be increased one-fourth of one per cent, provided that the rate shall in no case exceed four per cent."

In reaching a conclusion to the question one must review the history of legislation on the subject of street railways in the State, together with the decisions of our courts thereon. The original statute in Maine is found in the Public Laws of 1881, Chapter 91, providing for an excise tax on railroads, a tax to be levied against every corporation, person or association operating any railroad in this State. At that time there were no electric street railroads in the State.

By chapter 150 of the Public Laws of 1883, horse railroad corporations and associations were made subject to the provisions of the foregoing, except in the manner of ascertaining the tax.

Further amendments were made in 1887, 1901 and 1909, and appeared in the Revised Statutes of 1916, Section 32 of Chapter 9, being an adaptation of Chapter 150, Public Laws of 1883, relating to horse railroads and now relating to street railroad corporations or associations. The Revised Statutes of 1930, Chapter 12, Section 35, carry the same method of computation and rates of tax for street railways as appeared in the revision of 1916.

Section 35 of Chapter 12 reads, in part, as follows: "Street railroad corporations and associations are subject to the seven preceding sections," which sections, to which reference is made, refer to railroads, and our Supreme Court has decided, in the case of *State vs. The*

Boston & Maine Railroad, 123 Maine 48, that a railroad does not include a street railroad or street railway. The two are separate and distinct, and a different method of computation of the tax applies to railroads than is applicable to street railroads. In arriving at that conclusion, the Court discussed at considerable length the history of the two types of transportation, together with the intent of the legislature when the two separate sections of our statutes were enacted, dealing with these methods of transportation. The Court stated that street railroads or railways were not in existence when the original statute providing for taxation of railroads was enacted. Therefore, the legislature could not have considered, nor intended, to include an operation which did not then exist. The enactment of the tax on street railroad corporations came into being after the existence of horse-drawn vehicles on tracks. By the same parity of reasoning one is impressed by the fact that when the legislature enacted the tax on street railroads, it could not have intended to include motor busses and the revenue derived from such, because the facts would show that motor busses were not operated by street railroad companies at the time of that enactment and were not being operated at the time of the incorporation of the York Utilities Company.

The York Utilities Company must have had in mind the limitations under its charter, because it amended the same on August 5, 1924, to provide for the operation of jitney busses or other vehicles over certain routes designated therein, which indicated that the company did not consider the operation of busses a part of its operation of a street railroad or incidental thereto, but a separate and distinct operation.

"Words and Phrases," volume 36, defines a railway or railroad as being a transportation system operated on rails and confined to the course or courses covered thereby.

Further stating, the New York Courts have ruled a vehicle operated on pneumatic tubes by atmospheric pressure is not a railway within the meaning of the statute.

Astor v. New York Arcade Railway Company, 113 N. Y. 93

We next come to the words, as used in our statute for the purpose of taxing railroads, "gross average receipts," which are not to be found exactly defined in volumes of "Words and Phrases," but the words "gross receipts from traffic" had been defined in Volume 18 of "Words and Phrases," page 771, in the case of *City of Harrisburg vs. Harrisburg Railways Company*, 179 Atlantic 442, 443 and 319 Pa. 140, in which case an ordinance imposing a three per cent gross receipts tax on street railway or traction companies to be levied on "gross receipts from traffic," was held inapplicable to dividends received by street railway companies from wholly owned subsidiaries operating motor busses.

The conclusion necessarily reached by the reasoning of our courts and the history of the legislation on this subject would necessarily

be that the income or revenue from the operation of motor busses would not be properly included in computing the taxes on street railways, under our law.

A further question has been posed as to whether or not the mileage covered by the bus operations should be included or added to the trackage of the railway company in computing the tax.

"Words and Phrases," volume 18, page 771, cites the case of *Greenfield & T. F. Street Railway Co. vs. the Town of Greenfield*, 187 Mass. 352, as a case defining the words "gross receipts for each mile." In that case, the gross receipts of street railway companies shall be based on the annual gross receipts for each mile of track, and the computation is to be made by dividing the annual gross receipts by the entire number of tracks operated. In reaching the decision on the first question in this opinion, one necessarily must exclude anything except a negative answer to the second question. If the legislature did not intend to include bus operations when the statute was enacted, one could not reason that the mileage covered by the bus operation could be used. No attempt here is made to compute the tax on the return of the York Utilities Company, as that computation should be made by the taxing authority of the State; but it should be noted that in the return of the York Utilities Company to the Public Utilities Commission of the State of Maine, the miles of trackage set forth therein on page 400 in column (d) is 2.44 and under column (e) .50. An examination of the physical properties could determine whether or not the .50 miles should be added to the 2.44 miles of trackage for the purpose of final computation.

JOHN G. MARSHALL

Assistant Attorney General

April 8, 1943

To:

David H. Stevens, Assessor

Assessor

From:

John G. Marshall, Assistant

Attorney General

Supplemental Tax on York Utilities Co.

In response to your inquiry of March 31, 1943, as to whether or not the State Tax Assessor has the legal right to make a supplemental assessment against the York Utilities Company, using the method of computation in accordance with an opinion of this department on April 5, for previous years' taxes which were erroneously computed during those years.

The answer is in the negative.

The method for the computation of the tax by the State Assessor on street railroads is set forth in Chapter 12, Section 35 of the Revised Statutes. There is no statutory provision under that chapter for the correction of any errors or supplemental assessments of a tax.