

MAINE STATE LEGISLATURE

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August 19, 1943

Hon. Harry I. Rollins,
Greenville, Maine.

Dear Sir:-

Your letters of July 23rd and July 29th have been before me for some time for consideration. As you know, the State Tax Assessor is now making a survey of the tax situation in Maine, as required in the Resolve which you put through the legislature.

I note that you demand that I start action to force the assessors of towns to set up a system of taxation for intangibles.

The people of the State of Maine have authorized the legislature to provide for such taxation. The Constitutional Amendment reads as follows:

"But the legislature shall have power to levy a tax upon intangible personal property at such rate as it deems wise and equitable without regard to the rate applied to other classes of property."

This is Article XXXVI of the Constitution, adopted September 8, 1913.

It is a recognized fact which requires no argument and which you, being well posted on such matters, fully understand, that if we tax intangibles, so-called, on their gross market value at the rate which is imposed upon real estate and personal property other than intangibles, the tax will be confiscatory. The tax will absorb all of the income from most of the intangibles; it will be in excess of the income from a great many, and it will take a very large portion of the income from even those that pay the highest rates and are ordinarily regarded as speculative. Such a tax would necessarily destroy in the State of Maine all values on such property and make it absolutely impossible for anyone to sell any such property in this State. The immediate result would be that all such property would of necessity go out of the State and we would have no intangibles whatsoever to tax in any fashion.

The Attorney General has authority to require that local officials enforce the laws, but that authorization must be used with great care and discretion. Under our theory of government the State should interfere to the very least extent possible and should leave to local representatives of the people the duty and the power to perform those functional activities which the National and State Constitutions have guaranteed to them. Where there is a wilful refusal by local officials to act along lines that the experience of the people of the State has shown to be wise, or where the legislature has passed express mandatory laws, or where there is, on the part of local officials, a violation of the generally accepted rights of the people as a whole, the State should act and occasionally does. Inasmuch as the State is looking at the

whole body of the law and the application of all laws to the people of all communities, and inasmuch as on the State officials is placed the duty of administering all laws for what seems to be for the best interests of all the people, we have the duty of taking care lest through the exercise of arbitrary authority we do something that militates against the wellbeing of the State as a whole.

We have a general tax law on the books. The people of the State through their Constitutional Amendment have recognized the fact that the application of the general tax law to intangibles is something that they do not want. They have, moreover, authorized the legislature to set up a system of taxation of intangibles that will be a proper one and will not destroy that which the legislature is in duty bound to preserve. When the legislature has spoken, then it will be the duty of the local assessors to act as that body has instructed them. If they then fail to carry out the mandate of the legislature, it will be the duty of the Attorney General, as I understand it, to take such action in the courts as may seem best to compel proper observance of the law.

I fully recognize the importance of the question you have raised. My personal opinion is that the legislature should take some action under the Constitutional Amendment so that the tax assessors will know what they should do. At the present time in many of our communities there is some attempt being made by the local assessors to tax these intangibles. They set an arbitrary value on the securities, sometimes at about 25% of the market value, sometimes a great deal less, and tax them accordingly at the regular rate. This procedure seems to me to be one that cannot be justified under the statutes as they now exist. It imposes an unequal burden of taxation on our citizens. I hope to live to see the time when the legislature will put a law on our statute books that will clarify this situation.

Sincerely yours,

Frank I. Cowan
Attorney General

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