

MAINE STATE LEGISLATURE

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M.O.

December 23, 1943

Hon. Frank I. Cowan,
Attorney General of Maine,
Portland, Maine.

My dear Mr. Attorney-General:

I appreciate the privilege of reading the memorandum of the State Tax Assessor under date of December 11, 1943, and am glad to give you my reaction to it.

First, let me express the feeling of admiration that any reader of the memorandum can but have for the earnest thought that the State Tax Assessor has given to the problem, and his most commendable zeal in wishing to have an effective department. It is a pleasure, too, to note that he has no criticism of the efficiency and energy of the present state officials in his and co-ordinate departments. He is solely concerned with bettering the system under which they and he must work.

His plan as I understand it has four main divisions:

(A) A combination into one department of the assessing, billing and collecting features of present state taxes, which at present are split functionally between his department and others.

(B) A transfer to his department of the assessment and collection of inheritance taxes, now handled by your department. This, incidentally, would give him access to an attorney from your staff, deputed to locate in his department's offices, from which access he is confident he would get much needed legal advice without inconvenience to anyone concerned.

(C) An intensifying of the relation between his department and the local town and city taxing officers, through the availability in his department of a legal adviser to these various local tax authorities and to himself in connection with advising and conferring with them.

(D) A general survey and probable revision of the tax system, preparatory to post war demands and the possibility of the development of new forms and sources of taxation.

A word as to the existing tax system before discussing these four points. The state derives much of its income for the support of the state government from liquor. With that great source of income the state tax assessor is not concerned, of course. Income from fines, fees, licenses and so forth is also not within his territory. He is concerned

with the assessment, but not the collection, of taxes of the following categories:

- State tax on property in the towns and cities
- State tax on wild lands
- Excise taxes on public service corporations
- Excise taxes on cigarettes, gasoline (including "use tax"), circuses, potatoes.

He has no concern under the present law with the inheritance tax.

The towns and cities derive their tax income primarily from the property tax; the poll tax, the "excise tax" on motor vehicles, the bank tax, and possibly others, are minor incidents.

With reference to his suggestion (A) I really have at the moment no settled thought. He points out that the split state tax administration between two agencies, one assessing and the other collecting, leads to many administrative difficulties, and says that 50% of the country has abandoned that plan.

I suppose the present plan is the historical result of our state development. The state was a very incidental governmental feature, here in Maine; it was the towns that counted. In towns there has always been a separation of the assessing from the collecting feature. That is the system of checks and balances our fathers believed in. I can't help wondering whether the system which the state tax assessor advocates has been adopted generally in states with a background like Maine's, i.e., the New England states, New York, etc. In much of the country the state came first, the local unit is the county, and there is no strong town government. In these states a different system may have been more natural.

I think we should inquire pretty carefully into the fundamental reasoning behind the present system. If it has been outmoded by modern conditions, all right; let's change; but in governmental matters sometimes the highest business efficiency is governmentally bad. A certain amount of expensive lost motion is one of the necessary penalties of democracy. This may be one of those cases, and may not. I don't know. I am open to conviction one way or the other after further study, if I should ever be called on to do anything about it.

(B) As to the transfer of the inheritance tax, you well know my feeling of utter opposition. Just because income comes into the state doesn't mean that the source from which it comes and the manner of getting it in require that it should be handled by a particular official who is handling the collection of other income.

Definite reasons for leaving the inheritance tax assessing and collecting where they are, are the same as they have been whenever this proposition has been made in the past. The whole inheritance tax law was revised ten years ago by a distinguished committee, and their revision was adopted by the legislature without undotting an 'i' or uncrossing a 't'. That committee were unanimous for retaining the present system.

Why? Well, the inheritance tax is settled by lawyers through the probate court. With a lawyer whose status is wholly that of an assistant to the attorney general they can deal effectively; he has a prestige which a mere subordinate to the tax assessor would lack. An almost unique feature of the Maine law is the compromising power with reference to inheritance taxes. Only a person with the prestige of being subordinate to the attorney general alone should have such power.

Of course, the success of the present system in Maine is largely due to the remarkable man who for long has carried it on, - Mr. Stubbs. He is due for early retirement. It is my belief that a successor of his characteristics would be more readily obtainable as an assistant to the attorney general and to nobody else, than as a cog in the wheel of the assessing department.

In a nutshell: the present system works well, - far better than it does in many states, as I know from personal experience. At the moment I have taxes pending both in Maine and in New York. Changes of political administration in the tax assessing department in New York delayed decision for a long time. Mr. Stubbs is ready to decide on the spot the Maine aspect of the case when it is in shape to be presented to him. If the system works well, why change it?

I understand that the state tax assessor's primary reason for changing it is to get the advantage of easy accessibility to a lawyer located in his departmental offices. That alone should not be a reason for junking the present system, any more than the mere prima facie consistency of having the state tax assessor in charge of all state taxes should be such a reason, if the various taxes have different incidence. Calling a thing a tax doesn't mean that it is just like all other taxes.

As to (C) the intensifying of the relation between state and local tax officials. When the state tax assessor aids or advises local officials he very quickly gets away from the fundamental purpose of his office. That purpose is, to get money for the state. In so far as he advises local officials in connection with that purpose, - O.K. But I doubt if problems of that sort are what the state tax assessor has in mind, or that he needs a lawyer handy to his elbow for that purpose.

It is true that to some undefined extent the state tax assessor does have some powers with reference to local tax officers outside and beyond their functions with reference to state taxes; but I happen to know how this power came into being. The special tax commission of 1907 was much impressed by the increased assessments produced by the state tax commissions recently set up in some of the midwestern states, and felt that a centralized state authority could produce such results here. But it was the increase of income to the state which particularly interested that commission. They did not contemplate a centralizing of tax power in state officials.

My impression is that the statutory expression in the first sentence of R.S., c. 12, sec. 5 does not mean, - and never has been interpreted to mean - that the state tax assessor is to be the fountainhead of inspiration for local officials in carrying out their wholly local duties.

In other words, - I do not believe that the relation between the local and state officials should be intensified, as far as local matters go; and that removes the foundation for the state tax assessor's suggestion that he needs a lawyer handy to help him in advising these local people.

Since arriving at the above conclusion I have had access to a copy of yours of December 9 to Mr. Crawford of the Auditing Department, and I note with pleasure that in writing him you took a position consistent with mine above:- the tendency toward centralization is to be discouraged, where it means that local officials will lean on the state house instead of going their own gaits.

In this connection I might say that one reform which bade fair to be reached in many states, prior to the time when the demand for state expenditures grew, was to do away entirely with the state tax on local property, thus removing any reason for state interference with local taxing officials. Connecticut, for one, reached this happy state of facts. Here in Maine our problem of taxing the wild lands in unincorporated places makes that particular reform impossible. But it would stiffen up local officials if they were responsible to the people who elect them, and not to officials at the state house.

As to (D) I have only commendation. Certainly we ought to plan for the future, and, as a step toward doing so, find where we are now.

My conclusions from the state tax assessor's memorandum as it stands, without studying the subject in detail outside of his memorandum and my own information - and may I say, prejudices?- are these: As to (A) I am not sure, but would say that we should go slow; as to (B), NO!!! As to (C) NO! As to (D) - YES!

I have been particularly interested to study his memorandum because of some earlier experiences I have had. My first long thesis in college was on the tax system of Maine, - I remember Judge Morrill helped me on it. My first job was as clerk to the special tax commission of 1907. And I was sent to six conferences of the National Tax Association to represent the state, and I edited a pamphlet of the tax laws of the state for the board of state assessors. All that was 30 or more years ago, and I haven't had much occasion since to give thought to the subject; but I was in office at Augusta when the "Code" was under discussion, and experienced then some of the conflict between the theoretical urge toward centralized efficiency which the experts make, and the conservative ideas of Maine legislators that one should go slowly in changing a system if it works well in practice.

As to the centralizing tendency in Maine,- I see that the board of state assessors was first set up as a result of the recommendations of the tax commission of 1890,- and simply to equalize and assess the state tax on local property and wild lands, and state excise taxes. The tax commission of 1907 advocated giving it more power, and the legislature accepted the recommendation; but nobody contemplated that the board was thereby to take any control or oversight of local tax matters. The administrative code of 1931 merely transferred the existing administrative powers of the board to a single administrative head. I find no legislative basis for the theory that the state tax assessor owes a duty of supervision and oversight to local tax officials in local matters.

I shall be exceedingly interested to know of further developments in the matter, and if I can be of any help to you in developing and effectuating your own ideas, just call on me.

Yours truly,

(Signed) Clement F. Robinson

cc: David H. Stevens, State Tax Assessor, from Office of the Attorney General

Governor Sewall, January 13, 1944, " " " " " "
Philip D. Stubbs, Esq., Inheritance Tax Commissioner
William D. Hayes, State Auditor,