

MAINE STATE LEGISLATURE

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February 18, 1944

Frederick B. Dodd, Esq.
84 Harlow Street
Bangor, Maine.

Re: Eastern Trust and Banking Company
vs. Joseph H. McGillicuddy et al.

Dear Brother Dodd,

I have your letter of the 16th instant, the contents of which I have carefully read. I don't agree that Section 24 of Chapter 11 applies to "general town funds."

As I read this chapter, it applies to lands reserved for public uses and is the nucleus of the ministerial school funds dealt with in Chapter 20, Sections 50 to 63, the difference being that under Chapter 11 the Forest Commissioner now, and prior to that the Land Agent, had the care of these reserved lands which were held in trust by the State until the town was incorporated, and until then the Forest Commissioner was vested with the authority only to sell the timber and grass and also recover for timber and grass removed by trespassers, and the funds from the sale or recovered from trespassers were deposited with the Treasurer of the State. See Section 22 of this chapter. In 1917 the Treasurer was directed to set up two funds, one known as the Unorganized Townships Fund and the other as the Organized Townships Fund. (Section 23.)

By Section 24, the income of the Organized Townships Fund was added to the principal of the fund, and when such township was incorporated as a town, it was provided that "such funds belonging to it shall be paid by the treasurer of the state to the treasurer of the trustees of the ministerial school funds therein," etc.

After the incorporation of the town, the title to the reserved lands vested in it, and the right of the Forest Commissioner or Land Agent became suspended, and from then on the lands or timber were to be sold by the officials of the town. (See 61 Maine 447, 448, and 97 Maine 336.)

In the section following we find that when the incorporation of a town is repealed, the care and custody of the school funds reverts to the Forest Commissioner and he has the same powers in relation thereto as he had previous to the incorporation of the town, "and the school funds of said town shall be collected and transmitted to the treasurer of the state and by him made a part of the permanent school fund belonging to such township or tract." I also wish to call to your attention the case of Union Parish Society vs. Upton, cited in 97 Maine 335, which sustains the legislation of the State which diverted the proceeds of the sales of lands reserved for public uses from the ministerial fund to the fund for public schools in cases where the fee to such lands had not vested in the ministry.

The legislature from time to time has changed the course of these funds, and, as I read the cases that I have cited, the court strongly implies the power of the legislature to do so, notwithstanding the conditions under which these lands were set apart and reserved originally.

I believe that this should and ought to dispose of your concern about the court's appointing the State Treasurer as substitute trustee for the town officials who by statute are made the trustees of the ministerial school fund. In my opinion, the municipal officers can only be such while the town remains an incorporated town and I interpret Section 25, which provides that these funds shall be turned over to the State Treasurer in case the incorporation of the town is repealed, as equivalent to deorganization. I believe that repeal and deorganization mean the same thing, so far, at least, as the disposition of these school funds is concerned, and I am confirmed in this view by the fact that by this very section the reserved lands go back to the State as trustee for the town.

It is with this in mind that I prepared an Answer practically admitting all the allegations of your petition except the conclusion of law that the funds are to be disposed of in accordance with Sections 50-63 of Chapter 20, and I did this although I had no specific knowledge on the subject as to whether the funds were derived from the sale of land or from the sale of timber or both. I don't know whether you know what the derivation of the fund is, but I don't think that it makes any difference. The statute not only places the lands in the hands of the State as trustee, but it puts the funds in the possession of the State Treasurer. Brother Locke, I notice, used as a form the same Answer as I had prepared, I having furnished him with a copy, and also, before leaving for Florida, signed a consent decree that I had prepared, directing that this fund be turned over to the State Treasurer, and then providing that the State Treasurer shall hold it and upon the incorporation of that township that he shall turn over the fund with the accumulated interest to the trustee of the ministerial school fund of that town or to some other body which may be designated by the legislature hereafter and authorized to receive this fund. Although this decree does not in so many words say that the Treasurer of the State shall be named as trustee, nevertheless he does hold it as trustee as the decree reads.

I have no objection, of course, to your counsel fee, as suggested, and the payment of the disbursements incurred by you, and the decree which I have prepared and which has been agreed to by Brother Locke provides for this, except that we have left the sum blank for the judge to insert, and, speaking for this department, I have no objection to the judge's inserting therein the amount you ask as a fee and your disbursements, totalling \$136.78. As the decree provides for counsel fees only, the judge may add after the word "petition" "and for the disbursements incurred." I did not want to make the change myself, as the decree had been agreed to by Brother Locke in the form I had it; but I can see no objection to the judge's making that change, of course.

If the form of this decree is acceptable to you, will you have the judge make the insertion of the amount, fill up the dates and sign it? . . . If this decree is not acceptable to you, will you please . . . send a draft of what you would want? /// I may add that Brother Locke's interest was only to see to it that the decree provided for the return of the funds from the Treasurer when the town became incorporated. . .

Very truly yours,

Abraham Breitbard
Deputy Attorney General.

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