

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

February 6, 1948

To Earle R. Hayes, Secretary

Subsection I of Section 3 of Chapter 60 provides in part:

“... any service rendered as a teacher, superintendent or supervisor prior to becoming a member of this system shall be considered as creditable service. . .”

You state in your memo of February 4th that in order to determine whether or not such “creditible service” may be granted to a teacher who became a State employee on August 4, 1947, you have been asked the following question:

“Was the provision of this law above cited in force and effect up to August 13, 1947, the date when the new amendment as provided in Chapter 384, P. L. 1947 became effective?”

Answer. Under the provisions of Section 16 of Article XXXI of the Amendments to our Constitution, no act shall take effect until 90 days after the recess of the legislature which passed it, unless in the case of emergency, when the facts constituting the emergency shall be expressed in the preamble of the act. Chapter 384, P. L. 1947 did not contain the emergency clause and therefore took effect on August 13, 1947, 90 days after the recess of the legislature passing said Act.

The provisions of Section 3 of Chapter 30, R. S., were in effect on August 4, 1947. The last section of Chapter 384 provided that the provisions of this chapter shall take effect on July 1, 1947, but when the provisions of a statute conflict with the Constitution, the Constitution must prevail. Therefore the Act did not take effect until August 13, 1947.

It is my opinion that the legislature intended that this chapter should be retroactive to July 1, 1947, when once it had become effective under the provisions of the Constitution above cited.

RALPH W. FARRIS
Attorney General

February 9, 1948

To Arthur J. Fenton, Director of Taxation

Re: Tax on Property in Indian Township No. 4, Penobscot

Referring to your memo of October 29, 1947 and mine of January 23, 1948, and based on my conversation with you in my office concerning the heirs of Lydia E. Smith owning one-fourth undivided of a three acre lot, on which there is a building, and the other three-fourths undivided is owned by the Great Northern Paper Company:—

You state that as the matter now stands, the whole three acres will be taxed to the Great Northern Paper Company et als., the others being the Smith Heirs, the tax being divided for purposes of valuation, three-fourths to the Great Northern and one-fourth to the heirs of Lydia E. Smith, and you ask if the State's interest is protected by this procedure, in case of a tax delinquency.

You should tax these three acres to the Great Northern Paper Company and the Heirs of Lydia E. Smith, setting forth their respective interests in this parcel. If this is done, the State's interest will be protected in case of a delinquency. . .

RALPH W. FARRIS
Attorney General

February 12, 1948

To Ernest H. Johnson, State Tax Assessor

I have your memo of February 11th, relating to Chapter 281, P. L. 1945, imposing a blueberry tax, in which you cite Sections 224 and 227 of said chapter and ask the following question:

"Are blueberries grown and purchased in Canada but processed in Caribou, subject to this tax?"

Answer. It is my opinion that the language of Section 224 includes tax on blueberries processed in this State, as that section seems to be all-inclusive, covering "blueberries grown, purchased, sold, handled or processed" in this State. Section 227 provides for the processor or shipper to deduct the tax from the purchase price. This seems to be regardless of whether or not the berries are grown in the State of Maine, so long as they are processed here.

RALPH W. FARRIS
Attorney General

February 27, 1948

To Ernest H. Johnson, State Assessor, Bureau of Taxation
Re: Resignation of an Assessor

I have your memo of February 27th attached to a draft of a letter directed to the chairman of the Board of Selectmen in Bar Harbor, which letter is self-explanatory. You state that you would appreciate any comments which I might make on the same.

I agree with the contents of your letter. There would be no vacancy in the office until one member had been declared by legal authority totally incapacitated or he had resigned and his resignation had been accepted by the proper authority.

Under our State Supreme Court decisions, assessors of taxes, though chosen by the city or town, are public officers and in the discharge of their duties they are not subject to the direction or control of a municipality. *Rockland vs. Farnsworth*, 93 Maine 178; *Telegraph Co. vs. Cushing*, 131 Maine 333; *Walsh vs. Macomber*, 119 Maine 73.

The right of public officers to resign is well recognized. 43 American Jurisprudence, § 166, "Public Officers." "But the view generally prevailing is that to be effective the resignation must be accepted by a competent authority either in terms or by something tantamount to an acceptance, such as the appointment of a successor," citing *Thompson vs. U. S.*, 103 U. S. 480; *Edwards vs. U. S.*, 103, 471.