

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

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.

So I would advise the selectmen to be careful about accepting the resignation of an assessor who is considered incompetent but who has been declared incompetent by the court.

I think your letter is correct in allowing him to continue in office and the majority of the board to do the work until the next election.

I must advise you that it is my opinion that I would leave out the possibility of *quo warranto* in a case of this kind, where the majority of the board can act legally in signing the commitment.

It is my opinion that because assessors are public officials they may not resign unless they secure approval of the act of resignation from the State, county and local governments.

You will note that the statute which you cite in your letter to the selectmen, Section 38 of Chapter 80, refers to persons chosen to a town office, but does not contain a provision for election of a public officer. This is dangerous ground and I would not advise them to ask at the present time for the resignation of the assessor who is incapacitated.

In regard to your second matter, abatement of county taxes imposed upon the town, I agree with you that I can find no statute providing that the county commissioners can abate town taxes due the county or that the State Tax Assessor has any such authority.

RALPH W. FARRIS
Attorney General

March 4, 1948

To Fred Rowell, Veterans' Affairs
Re: Veterans' Preference in State Employment

Your memo of February 20th received. You call to the attention of this department Chapter 360, P. L. 1945, which provides for certain preferences in appointments to the classified service of the State to honorably discharged male and female veterans, widows of veterans, and wives of disabled veterans. This section provides:

"For the carrying out of the provisions of this section, the following dates of active service in the United States armed forces shall be: . . .

"V. World War II, December 7, 1941, and the date of cessation of hostilities as fixed by the United States government. . ."

By proclamation #2714 the President of the United States proclaimed the cessation of hostilities in World War II, effective at twelve o'clock noon on December 31, 1946. In the preamble it was stated in part,

"Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated."

I am of the opinion that this proclamation is controlling in determining when, under our statute above referred to, cessation of hostilities was "fixed by the United States government." Thus, a veteran, to be entitled to the preferences provided for in this act, must have been in the active service between December 7, 1941, and December 31, 1946, at 12 o'clock noon.

ABRAHAM BREITBARD
Deputy Attorney General