

# MAINE STATE LEGISLATURE

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March 17, 1953

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To Hon. Alexander A. LaFleur, Attorney General  
Re: L. D. 40, LEGAL AUTHORITIES

I have suggested to you that you may wish for your file a statement of authorities in support of your letter to the Hon. Edward E. Chase, Chairman of the Taxation Committee, dated March 12, 1953.

The letter contained the statement in answer to question 1, that "basis is that figure which is multiplied by the rate to ascertain the tax."

Pacific Mutual Life Insurance Co. v. Löwe, 1933, 354 Ill. 398, 188 N. E. 436, 91 A.L.R. 788. The court was discussing retaliatory taxation of an insurance company. "The keystone of the statute is 'the same basis or rate.' The basis is the ground or foundation in which the tax is computed; the rate is the per cent fixed by the statute applied to the basis in making the calculation. The result thus obtained is the amount of the tax to be paid." (91 A.L.R. at page 793)

Cleveland, etc. Railway Company v. Backus, 154 U.S. 445. The court said, "The rule of property taxation is that the value of the property is the basis of taxation." It will be noted that the court was not attempting a complete definition, the court could well have said that a certain percentage of the value could also be a basis.

In the footnote of the court's opinion, 244 U.S. 516, the writer uses "basis": "A few of the states have enacted laws adopting percentages of full value as bases of taxation."

At the close of your letter to Mr. Chase is a reference to the Federal Constitution.

Travellers' Insurance Company v. Connecticut, 1902, 185 U.S. 364. The State of Connecticut taxed the stock of Travelers' Insurance Company as personal property. The stock of non-residents was taxed on full value. The stock of residents was taxed on a value diminished by the amount of real property the corporation was taxed on in the State of Connecticut. The taxpayer claimed discrimination, stating that non-residents were denied equal protection under the 14th amendment of the United States Constitution. The court held there was no discrimination. Since residents also pay taxes to municipalities, which the non-residents do not, there is no inequality. Perfect equality is neither possible nor required. The court quoted with approval from Merchants Bank v. Pennsylvania, 167 U.S. 461, 464: "This whole argument of a right under the Federal Constitution to challenge a tax law on the ground of inequality in the burdens resulting from the operation of the law

is put to rest by the decision in Bell's Gap Railroad v. Pennsylvania, 1887, 134 U.S. 232, "the

In Bell's Gap Railroad v. Pennsylvania, 1887, 134 U.S. 237, the court said: "The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them."

The most important aspect of Mr. Chase's proposed bill, in my opinion, is that permitting a separate rate for the unorganized territory. In that territory, there is only one government, State Government. Therefore, the State in this territory must perform various functions which are performed by municipal government elsewhere. There is thus a strong parallel between the instant case and Travellers' Insurance Company v. Connecticut, supra.

You may wish to file this memorandum with your letter to Mr. Chase.

Boyd L. Bailey  
Assistant Attorney General

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