

MAINE STATE LEGISLATURE

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No

June 3, 1955

To Ernest H. Johnson, State Tax Assessor
Re: Cargo Trailers

By memorandum of May 19 you request an opinion whether the City of Auburn may tax cargo trailers owned by St. Johnsbury Trucking Company, a Vermont corporation, which trailers were in Auburn on April 1. As I understand the facts, the taxpayer maintains a terminal in Auburn. Trailers are brought there and unloaded or loaded. Perhaps they are stored there awhile. The trailers are used in interstate commerce. Before proceeding further I call to your attention that the facts are somewhat sketchy.

No question of interstate commerce is involved.

"The fact that property is used or employed in interstate or foreign commerce does not of itself render it immune or exempt from non-discriminatory local taxation. . . ."

51 Am. Jur. 267, "Taxation", Sec. 206.

Johnson
In John Oil Refining Co. v. Oklahoma, 1933, 290 U.S. 158, the court said:

"Although rolling stock, such as these cars, is employed in interstate commerce, that fact does not make it immune from a non-discriminatory property tax in a State which can be deemed to have jurisdiction."

290 U.S. at 161

The question is, rather, whether under the due process clause the City of Auburn has power to tax the trailers.

"So far as due process is concerned, the only question is whether the tax in practical operation has relation to opportunities, benefits, or protection conferred or afforded by this taxing state."

336 U.S. at 174

In addition to the factors just mentioned there is the aspect of multiple taxation which might, of course, amount to confiscation where a vehicle passes through a great many jurisdictions.

Basically personal property is taxed at the domicile of the owner. In Northwest Airlines v. Minnesota, 1944, 322 U.S. 292, Northwest Airlines was incorporated in Minnesota. Minnesota levied an ad valorem property tax on all the planes of the airline. All these planes were based in St. Paul, but not all of them were in St. Paul at any one time. Each was in St. Paul at some time during the year. The court clearly indicated that its decision would have been different had the corporation been a foreign one.

New York Central Railroad v. Miller, 1905, 202 U.S. 584. Here also the State of incorporation taxed railroad cars and the tax was held valid. This case is similar to the Northwest Airlines case.

Very close to the facts at bar, perhaps a fortiori, was Johnson Refining Company v. Oklahoma, 1933, 290 U.S. 158, Pawnee County, Oklahoma, levied a property tax on the entire fleet of the appellant's tank cars. Appellant was an Illinois corporation with a principal office in Chicago and refinery in Pawnee County, Oklahoma. The cars were used to convey oil from the refinery to various points of delivery throughout the United States. They were infrequently used in connection with the appellant's oil plant in Illinois. They were sometimes loaded in States other than Oklahoma, but each car was stencilled, "When empty return to Johnson Oil Refining Company, Cleveland, Oklahoma." At Cleveland, Oklahoma, appellant had repair trackage and enough tracks to store 67 cars. The cars were in almost continual movement, when stopped for loading, they stayed at Cleveland 24 hours to 10 days, depending on the season of the year and the volume handled. Each car came to Cleveland about once each 30 days. Each car was away from Cleveland 20 to 29 days a month.

The court discussed the matter of situs:

"Appellant had its domicile in Illinois, and that state had jurisdiction to tax appellant's personal property which had not acquired actual situs elsewhere. (Cases cited). While in this instance, it cannot be doubted that the cars in question had acquired an actual situs outside the State of Illinois, the mere fact that appellant had its refinery in Oklahoma would not necessarily fix the situs of the entire fleet of cars in that State. The jurisdiction of Oklahoma to tax property of this description must be determined on a basis which is consistent with the like jurisdiction of other States."
290 U.S. at 161-2.

The court concluded that because the cars were habitually employed in Oklahoma the property

"should bear its fair share of the burdens of taxation to which other property within the State is subject. When a fleet of cars is habitually employed in several States - the individual cars constantly running in and out of each State - it cannot be said that any one of the States is entitled to tax the entire number of cars regardless of their use in the other States. When individual items of rolling stock are not continuously the same but are constantly changing, as the nature of their use requires, this Court has held that a State may fix the tax by reference to the average number of cars found to be habitually within its limits."

290 U.S. 162

Nothing in the facts indicates that the St. Johnsbury trailers had a situs in Auburn. It would appear that the Johnson Oil Refining Co. case was much stronger for the State than the Auburn case.

The Supreme Court has held, *supra*, that the State might tax the average number of cars found to be habitually within its limits. This raises the question whether it is possible for the City of Auburn to tax the average number of trailers without the aid of special legislation. There is a split of authority on this question. To me the better reasoned cases hold that there cannot be such taxation.

In the Johnson Oil Refining Company case, after the Supreme Court of the United States had delivered its opinion, there was further litigation in the State courts. (1934, 30 P. 2d 692) The court held that Pawnee County might tax the average number, relying on the United States Supreme Court opinion, even without legislation specifically empowering the county to tax "average" cars rather than actual cars. It seems to me that the court is in error in accepting an interpretation of its own laws by the United States Supreme Court. There are many citations to the effect that a State court has a complete monopoly in interpreting its own statutes.

Lewis v. Holmes Motor Freight Corporation v. Atlanta, 1943 Ga., 25 S.E. 2d 699. Here the City of Atlanta taxed the average number of trucks and trailers used by the plaintiff in interstate commerce. The plaintiff was a North Carolina corporation operating trucks and trailers between North Carolina, South Carolina and Georgia. It maintained a terminal at Atlanta. As far as I know, the facts are identical with the St. Johnsbury one.

The statute empowered the City to tax ad valorem

"all real and personal property which under the laws of this State is subject to taxation within the incorporate limits of said city."

The court held that the taxing power of a city should be narrowly construed. Its power to tax is delegated by the State and it has no power which cannot be spelled out of the delegating language. As a matter of fact no single truck or trailer had a situs within the city. The court concluded that without special legislation the city could not tax.

City of Jackson v. Dixie Greyhound Lines, 1941, Miss., 4 S. 2d 721. The City of Jackson, Mississippi, taxed a bus company on all its buses operating through a passenger terminal at Jackson. At Jackson there were three employees who sold tickets, two porters and one baggage man. There was a waiting room. The company also had a warehouse in Jackson where buses were sometimes stored. The court held that the City had no power to tax these buses except one old bus which always stayed at Jackson. The court reasoned that if Jackson had power to assess the buses, so would every other municipality through which they ran. If that were done, taxation would be unequal throughout the State, contrary to the provisions of the State Constitution.

In Baltimore v. Western Maryland Railroad, 1878, 50 Md. 274, 299, there are dicta in accord. What the court said was that in the absence of a special statute, rolling stock is taxable only by the ward of domicile.

It is my conclusion that since there is no special legislation, the City of Auburn may not tax the trailers in question.

We may wish to draft special legislation on this subject. In order to do so, it would be advisable to see what other States have done. You may wish to communicate with Mr. Charles Congdon on this subject.

Boyd L. Bailey
Assistant Attorney General