

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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In reference to your last question, it is a fundamental principle that no person may sue its sovereign without its consent.

I presume that the payments made by the other taxpayers have been on a voluntary basis. 51 Am. Jur. 1005, Section 1167 states:

“ . . . Taxes voluntarily paid without compulsion, although levied under the authority of an unconstitutional statute, cannot be refunded or recovered back without the aid of a statutory remedy . . . ”

51 Am. Jur. 1012, Section 1179, provides:

“The recovery of illegally exacted taxes is solely a matter of governmental grace. In the absence of an authoritative statute, taxes voluntarily, although erroneously, paid cannot be voluntarily refunded, although there may be justice in the claim . . . ”

The general rule that money voluntarily paid with full knowledge of the facts applies to taxes. See *Smith v. Readfield*, 27 Me. 145; *Abbott v. Inhabitants of Bangor*, 56 Me. 310; *Creamer v. Bremen*, 91 Me. 508. Each of these cases involves property taxes, but the principle enunciated has application here.

I do not believe it necessary to discuss the personal liability of a tax collector nor the right of recovery of a tax paid under duress when in the hands of a tax collector.

The State may by appropriate legislative means refund this tax but this would not, of course, concern you.

GEORGE A. WATHEN
Assistant Attorney General

October 9, 1959

To: Major General E. W. Heywood, Adjutant General

Re: False Alarms — Calling Out of National Guard

You point out in your memo of October 5, 1959, that some unknown individual called WGAN radio and requested that the Maine Army National Guard be alerted; this without authority or knowledge of your office or any National Guard unit.

You inquire if such action is punishable or unlawful.

From our examination of the laws, it appears that only one section would be available under which prosecution could be had for such action. If the individual placing such call asserted or alleged that he was placing the call as a department head or agent, then we would be of the opinion that the following statute would apply:

Chapter 143, section 10. “Falsely assuming to be or act as a state official. Whoever knowingly and falsely assumes to be the head of any department or commission of the state, or the deputy, or inspector thereof, or the agent thereof, or any state official, and to act as such, or knowingly and falsely assumes to discharge any of the duties of such official, or knowingly and willfully invites or receives any communication, document, record or letter

properly belonging to such state official or relating to the office or official business of said official, or in any way knowingly and willfully obstructs or delays such official in the discharge of any of his official duties, shall be punished by a fine of not more than \$5,000, and by imprisonment for not less than 1 year nor more than 5 years."

JAMES GLYNN FROST
Deputy Attorney General

October 9, 1959

To: Edward Langlois, General Manager
Maine Port Authority
Maine State Pier
Portland, Maine

Dear Mr. Langlois:

This letter is in response to your request for this office to outline your responsibility regarding Chapter 125, Private and Special Laws of 1959, which chapter amends Private and Special Laws of 1929, Chapter 114, section 1, subsection (e), and Private and Special Laws of 1957, Chapter 190, section 1, in the following manner:

"Ferry service for North Haven, Vinalhaven, Islesboro, Swan's Island and Long Island Plantation. It shall be the duty of the Maine Port Authority to operate a ferry line or lines between the mainland and the Towns of North Haven, Vinalhaven, Islesboro and Swan's Island for the purpose of transporting vehicles, freight and passengers to and from said towns, *and the Maine Port Authority may operate such ferry line or lines to and from Long Island Plantation.*" (Emphasis ours to indicate the effect of the 1959 amendment.)

Initially we note that the quoted provision can be divided into two parts — one portion of the law being mandatory in nature; the second being permissive. The Authority "shall" operate a ferry line or lines between the mainland and the Towns of North Haven, Vinalhaven, Islesboro, and Long Island Plantation, but the last clause indicates the Authority *may* operate such line or lines to and from Long Island Plantation.

There clearly appears to be a deliberate legislative intent to use compelling language with respect to the first class of service, and to use permissive language in the new amendment.

We are of the opinion that with respect to service to Long Island Plantation, the Maine Port Authority is to exercise its administrative discretion in determining whether such service shall be operated, giving due regard to all conditions which might affect that service, including the cost of the service in relation to the retirement of bonds, maintenance, repair, and other such factors.

Very truly yours,

JAMES GLYNN FROST
Deputy Attorney General