

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

entice industries to move into a certain locality, and each of these attempts have been held unconstitutional when tested in the law court. In *Brewer Brick Co. v. Town of Brewer*, 62 Me. 62 (1873), a law almost identical in form was struck down. In this case the Town of Brewer, pursuant to legislative authority, voted to exempt the Brewer Brick Co. from the payment of taxes for a period of ten years. This was done in order to encourage the company to build a plant in Brewer. The second year after this vote was passed the town decided that it would no longer honor the agreement and taxed the Brick Co. along with all other businesses. The company paid under protest and brought suit to recover this tax. In holding the abatement of tax unconstitutional, the law court pointed out that such a measure would place a great burden on competitors in receiving such a benefit and would also force the taxpayers of the town to support a private enterprise.

“Of two competing capitalists, in the same branch of industry, one goes into the market with goods relieved from taxes, while the goods of the other bear the burden. One manufacturer is taxed for his own estate and for that which is exempted, to relieve his competing neighbor, and to enable the latter to undersell him in the common market; — a grosser inequality is hardly conceivable!” *Brewer Brick Co. v. Town of Brewer*, 62 Maine 62, 75.

The latest opinion involving this question of industrial exemption was given by the Justices of the Supreme Court in 152 Me. 440. The question behind this opinion was whether or not an act relating to an industrial development in the City of Bangor would be constitutional. The court was of the opinion that, since the benefit would go to private industry, the act involved a private rather than a public purpose and that the city could neither raise money by taxation nor acquire property by eminent domain for such a purpose.

“That such a course could well be of great value to the particular enterprise and so to the city or community would not affect the application of the law.

“The test of public use is in the advantage or great benefit to the public. ‘A public use must be for the general public, or some portion of it, who may have occasion to use it, in a use by or for particular individuals. It is not necessary that all of the public shall have occasion to use. It is necessary that everyone if he has occasion, shall have the right to use.’ ”

It is our opinion that the act in question would involve the use of public tax monies for private purposes and would thus violate the several provisions of the State Constitution referred to above.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General

January 18, 1961

To: R. W. Macdonald, Chief Engineer of Water Improvement Commission

Re: Interstate Pollution Control Work

We have your request for an opinion concerning the power of the Water

Improvement Commission to act with respect to interstate waters. As I understand it, the authority of the Commission to take any action with regard to interstate waters has been questioned and the Commission would like to know whether or not it can conduct hearings, run surveys and enforce interstate classification.

Section 7 of Chapter 79 clearly gives the Commission the authorization to cooperate with other states and specifically mentions waters which run through this state and any other state. The question, therefore, is whether or not the act relating to interstate water pollution control, enacted as Chapter 79-A of the Revised Statutes of the State of Maine, gives the Water Improvement Commission any power to deal with these interstate problems. Under Article IV under this interstate act the control commission "shall make recommendations for any legislative action deemed by it advisable . . . to carry out the intent and purpose of this compact."

In Article V the Commission is given the authority to establish reasonable standards of water quality, with the local agencies of the various states preparing the classification of the interstate waters.

Section 7 of Chapter 79-A then imposes certain restrictions on any action taken in behalf of the State of Maine by the Maine representatives on the Commission. It is clearly set forth that they shall not vote in favor of or commit the State of Maine to any classification of interstate water which would be higher than the classification already established by our legislature, or to any classification of water which has not already been classified by our legislature.

Under the terms of Chapter 79 of the Revised Statutes, the legislature of this State has the sole authority to establish the classification of waters. As a corollary to this proposition, the legislature has forbidden the interstate commission to do that which our State commission could not do. In other words, the legislature remains the sole classifier of waters in the State of Maine. This does not mean, however, that the Water Improvement Commission can take no action pertaining to interstate waters. Under Article V of the interstate compact, the Water Improvement Commission is given the duty of preparing a classification of the interstate waters of the State of Maine for the use of the interstate agency, and to confer with that agency on questions relating to classification of interstate waters. Although such a proposed classification must still be presented to and passed by the legislature of the State of Maine before it becomes effective, it is our opinion that the Water Improvement Commission has the right to conduct hearings and surveys with regard to interstate waters and, once a classification of these waters has been passed by the legislature, to enforce that classification.

The question has also been raised as to the effect of regulations passed by the Interstate Control Commission. Chapter 79-A, section 2, Article IV specifically states that the Interstate Commission shall promulgate rules and regulations for its management and control. As this commission is thus given the authority to make regulations, valid regulations made pursuant thereto have the effect of law.

THOMAS W. TAVENNER

Assistant Attorney General