

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

June 16, 1961

To: Robert G. Doyle, State Geologist, Department of Economic Development

Re: Public Lot Agreement Proposal

This is in answer to the questions proposed in your memorandum of May 23, 1961.

Question No. 1: Whether or not the State of Maine through the Forestry Commissioner can agree with the proprietors of an unincorporated township that the Forestry Commissioner will not locate a public reserve lot so long as the proprietors contemplate mining operations within the unorganized township.

Answer: R. S. 1954, c. 36, § 12, as amended, provides in part:

“The commissioner, under the direction of the governor and council, . . . may . . . grant mining rights, after the approval of the mining bureau, on public reserve lots in any township or tract of land until the same is incorporated, on such terms as they direct.”

It is clear from the above that the Forestry Commissioner may negotiate the granting of mining rights on a public reserve lot. When the public lot is not located, the State has a right to a proportionate share of the land revenues of the unincorporated township as the acreage of the public land bears to the acreage of the entire tract of land, *Mace v. Land & Lumber Co.*, 112 Me. 420.

R. S. 1954, c. 36, § 48, provides in part:

“In townships or tracts sold and not incorporated, the public reserved lots may be selected and located by the commissioner and the proprietors, by a written agreement, describing the reserved lands by metes and bounds, signed by said parties and recorded in the commissioner’s office. . . .”

Under Section 49 the commissioner, when he cannot agree with the proprietors on the location of the public reserved lot, may file proceedings in the Superior Court for locating the lot.

The discretionary power vested in the Forestry Commissioner to locate a public reserved lot is an official duty and cannot be contracted away. Therefore, in any contract between the Forestry Commissioner and the proprietors of a township and the mining company, the Forestry Commissioner could not agree to refrain indefinitely from locating public reserved lots.

As I understand it, the proprietors of the unorganized township and the mining company feel that if mineral wealth is discovered within the township, the State through the Forestry Commissioner would locate a public reserved lot at the mineral deposit itself. This would not be the case as the proprietors and the mining company are protected under R. S. 1954, c. 36, § 48, as amended, since the reserved lot must average in quality, situation and value as to mineral rights with the other lands therein.

Question No. 2: Whether or not the contract which you attached to your memorandum provides in sufficient detail the 5 per cent royalty requirement under the Maine Mining Bureau Law.

Answer: I am of the opinion that the contract does sufficiently require the payment of 5 per cent royalty. However, the mining company as well as the proprietors of the unorganized township could be made a party to the contract.

Question No. 3: Whether or not the State should contract only with the proprietors of the unorganized township relative to the State’s proportionate share

of the land rentals and mining royalties paid by the mining company to the proprietors for the unlocated public reserved lots.

Answer: I am of the opinion that both the proprietor and the mining company should be made a party to the agreement.

RICHARD A. FOLEY

Assistant Attorney General

June 20, 1961

To: Frank S. Carpenter, Treasurer of State

Re: Internal Revenue Service Levies upon State Held Monies

We have received and considered your verbal request for an opinion as to whether or not the State of Maine should honor levies made by the Internal Revenue Service upon monies held by the State and owing to a delinquent taxpayer.

This problem has arisen several times in the past in various situations involving State employees and independent contractors doing work for the State. As we understand the question here, however, it includes all levies whether on monies owed to a State employee, independent contractor or any other person or corporation to whom the State owes a sum of money. This question has recently been decided finally by the Supreme Court of the United States. *Sims v. United States of America*, 359 U.S. 108, March 23, 1959. The opinions of the Supreme Court are absolutely binding upon all courts in the State of Maine and in all other States. *State v. Furbush*, 1881, 72 Me. 493, 496.

In *Sims v. United States of America* the question was whether the Internal Revenue Service could enforce a levy against wages owing from the State of West Virginia to a delinquent taxpayer. In upholding this right of levy the Supreme Court pointed out that "nothing in the constitution requires that the salaries of State employees be treated any differently, for federal tax purposes, than the salaries of others, . . ." The court went on to rule that any State should be treated as would a natural person for the purpose of enforcing the provisions for levy contained in the Internal Revenue Code.¹

It is our opinion, therefore, that:

- 1) Under the terms of the opinion in *Sims v. United States*, the State of Maine is a person with regard to federal tax levies.
- 2) Under 26 U.S.C. 6332, every person holding money of a delinquent taxpayer is subject to levy.
- 3) Therefore, the State of Maine is subject to any and all federal levies against monies owing by it to a taxpayer.

¹ Section 6332 of Chapter 26, U. S. Code, provides that "Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process."

THOMAS W. TAVENNER

Assistant Attorney General