

# 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

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.<sup>1</sup>

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.

---

<sup>1</sup> 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