

# MAINE STATE LEGISLATURE

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11  
70

May 16, 1963

Representative Charles E. Waterman  
Chairman  
Committee on Taxation  
House of Representatives  
State House  
Augusta, Maine

Dear Representative Waterman:

We are in receipt of your request for an opinion as to the constitutionality of L. B. 1225 (H. P. 836), An Act Establishing an Excise Tax on Livestock. The pertinent provision of this proposed statute reads as follows:

- I. Excise tax on livestock. An excise tax shall be levied annually with respect to each calendar year on all livestock within the state on the first day of April which were born before the first day of January at the following rates: Horses, mules, ponies, donkeys and cattle, \$1. per head, sheep, swine, goats and other species, \$.50 per head.
- XI. - - -
- III. - - -
- IV. - - -

You also ask whether this provision is properly classified as an "excise tax."

We must answer both questions in the affirmative, and, for the sake of clarity, both questions will be answered together.

Webster defines an excise as "a duty or import levied upon the manufacture, sale, or consumption of commodities within the country, or, in the form of exactions for license, for permission to practice or conduct certain sports, trades, occupations, etc." It would appear from this bill that the intention is to exact fees for the permission to raise livestock.

Our court, in discussing Article 9, § 8, Constitution of Maine, stated: "This section does not prohibit the Legislature from imposing other taxes than those on real and personal property. The legislature is left free to impose other taxes, such as poll taxes, excise taxes, license taxes, etc. It can impose such taxes in addition to, or instead of, taxes on property." Opinion of the Justices, 133 Me. 525, 528. Article 9, § 8 provides:

"All taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally, according to the just value thereof; but the legislature shall have power to levy a tax upon intangible personal property at such rate as it deems wise and equitable without regard to the rate applied to other classes of property."  
(Emphasis supplied.)

In further discussing this section, our court in Opinion of the Justices, 141 Me. 442 held that "the only limitation upon the exercise of the legislative power of taxation in this state appears in this section."

There is no question that this tax is not levied on the value of the property being assessed strictly on the basis of a set fee, regardless of value. As such, it could not be a valid personal property tax per se. Constitution of Maine, Article 9, § 8. Arbitrary taxes on property without regard to value, are expressly prohibited, and all measures for the collection and imposition of taxes upon property are required to conform to this general principle

of equality. See State v. Hamlin, 86 No. 495, 499. Whilst thus providing for a uniform mode of taxation on property, it was not the purpose of the framers of the Constitution to prohibit other species of taxation, but to leave the legislature the power to impose such other taxes as the necessities of the government might require. See State v. Hamlin, supra; Tyson v. State, 28 Md. R. 586; State v. Baltimore, 70 Md. 294; Opinion of the Justices, 133 No. 525, supra; Opinion of the Justices, 141 No. 442, supra.

It is a basic principle of constitutional law that the legislative power over taxation for public purposes is limited only by the positive requirements or prohibitions of the Constitution. It is also a fundamental principle that no act of the legislature shall be adjudged unconstitutional unless it is plainly forbidden by some plain provision of the Constitution. Opinion of the Justices, 102 No. 527, 529. The only constitutional requirement of an excise tax, is that it be uniform as to the entire class. State v. Hamlin, supra.

The most comprehensive comparison of property taxes as opposed to excise taxes is found in Oliver v. Washington Hill, 11 Allen (Mass.) 268, where it is stated:

"The words 'tax' and 'excise' although often used as synonyms, are to be considered as having entirely distinct and separate significations. . . . The former is a charge apportioned either among the whole people of the state or those residing within certain districts, municipalities, or sections. It is required to be imposed so that if levied for the public charges of government, it shall be shared according to the estate real and personal, which each person may possess; or, if raised to defray the cost of some local improvement of a public nature. It shall be borne by those who will receive some special and peculiar benefit or advantage which an expenditure of money for a public object may cause to those on whom the tax is assessed. An excise, on the other hand, is of a different character. It is based on no rule of apportionment or equality whatever. It is a fixed, absolute, and direct charge laid on merchandise, products,

61

Representative Charles E. Waterman -4- May 16, 1963

or commodities, without any regard to the amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public object and a special benefit occasioned to those by whom the charge is to be paid." (Emphasis added.)

In conclusion, we call your attention to the licensing tax on dogs, which is in effect an excise being levied arbitrarily, with no correlation to value.

Respectfully submitted,

Wayne B. Hollingsworth  
Assistant Attorney General

WBH/sif