

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)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

✓
no
October 29, 1963

Paul A. MacDonald

Secretary of State

Carl O. Bradford, Assistant

Attorney General

Maine Mining Law

Your memorandum dated September 19, wherein you request an interpretation of Section 5, II, Chapter 39-B, Revised Statutes of 1954, as amended, is hereby acknowledged.

Facta:

Dunlap Mines Limited is interested in copper-zinc mining operations on State-owned land at Blue Hill, Maine. In extracting the ore and turning it into a finished product, the vein of ore must be drilled, blasted, scraped to raises, transported to haulage trains, hauled to the mine shaft, loaded into skips, hoisted to the surface and dumped into a crushing plant. The ore is then further separated from waste rock by the crushing process, then passes through a "flotation" plant where the copper sulphide particles are selectively removed from the ground ore, the end product being referred to as copper concentrate. The copper concentrate is then run through a smelter and thereafter electrolytically refined into pure metallic copper which is for the first time marketable at prices posted in the world markets.

Section 5, II, Chapter 39-B, provides for the payment of royalties to the State of Maine as follows:

*Royalty payment of 5% of the adjusted fair market value of the minerals or metals removed from the ground is charged on an annual basis, and shall be applied to defray rental charges up to the maximum rental chargeable in any one year. All royalty payments in excess of the maximum rental charges shall be paid as hereinbefore stated. The adjusted fair market value for such products as have a posted field or market price at the mine head shall be the posted field or market price at the time of removal from the ground without deductions except those expenses of hoisting, crushing and loading necessary to place the severed product into marketable form and at a marketable place.

"The adjusted fair market value for such severed products as must be processed or beneficiated before they reach a marketable form, shall be the fair value of such severed products in their first marketable form as ore concentrate at point of concentration, after deduction of expenses of hoisting, crushing, loading, transportation, processing and beneficiation.

"In case said severed products have no market value at the mine or as a concentrate, the adjusted fair market value shall be the value of such severed products when they first reach a marketable form, after deduction of expenses of hoisting, crushing, loading, transportation, processing and beneficiation and after deduction of the value of any other materials or articles which are combined with, mixed with, absorbed in, or absorbed by said severed products in the process of turning said severed products into their first marketable form. There shall also be deducted the expenses of such combining, mixing or absorbing process."

In extracting the ore and turning it into a finished product, "tailings" from the crushing process will be deposited in Second Pond to the extent that Second Pond will eventually be filled to its present water level or higher.

QUESTION #1:

Is the 5% royalty to be computed:

- (1) on the value of ore at the mine head, or
- (2) on the value of the ore after concentration, or
- (3) on the value of the ore after refining or smelting?

ANSWER:

- (3) The value of the ore after refining or smelting.

OPINION:

The answer to this question involves a consideration of each of the paragraphs relating to royalties in Chapter 39-B.

The first paragraph should properly be construed to relate only to those minerals or metals which have a market value in the field and require no further processing before a value can be placed thereon. Obviously, this paragraph does not apply to copper mining operations because the extractions from a copper mine, at the mine head, have no value in the open market due to the further processing which is necessary to place the copper into a marketable form.

The second paragraph relates only to those minerals or metals which have a value as an ore concentrate at the point of concentration. Copper concentrate has no market value, as such, due to the smelting and refining operations which are still necessary to place the copper into a marketable form.

The third paragraph, therefore, sets forth the test as to when the royalty shall be computed in the case of copper; i.e., the value of the severed products "when they first reach a marketable form, after deduction of expenses of hoisting, crushing, loading, transportation, processing and beneficiation."

QUESTION #2:

At what point do the deductions for expenses of hoisting, crushing, loading, transportation, processing and beneficiation apply, as used in the Mines Mining Law?

ANSWER:

At the point where the ore is placed in cars for hoisting from the mine.

OPINION:

The Maine Mining Law omitted "mining" expenses from the deductions allowed against royalties.

"Mining in its general and at the same time restricted sense . . . comprehends and includes the digging and searching for precious and economic metals and minerals, whether by shafts, pits and tunnels, or by hydraulic gravel mining, or the quarrying of building stone, marble and slate . . . but excludes digging and making openings or cuts for railways, or other means of general transportation otherwise than to and from the substance of the mine itself."
Snyder on Mines, § 134.

If the Legislature had intended to allow deductions for all expenses incurred in extracting ore deposits before applying the royalty, it would have provided therefore by including the word "mining" to the allowable deductions. Therefore, the expenses normally attributable to extracting the ore from the vein should not be allowed as deductions in arriving at the adjusted fair market value.

The allowable deductions include the "expenses of hoisting, crushing, loading, transportation, processing and beneficiation." A fair interpretation would be that transportation expenses include those of placing the extracted ore into cars and transporting it to the surface. "Hoisting" is the first of the enumerated expenses listed but this does not mean that the Legislature intended to use the mine shaft as the starting point for calculating deductible expenses. Therefore, the expenses incurred in placing the extracted ore into cars for hauling to the surface for the crushing process are properly attributable to transportation expenses.

Before taking up the next question, and without getting into the area of legal accounting, it should be borne in mind that in computing the 5% royalty, there must be a proper breakdown of the expenses between mining expenses, which are not allowable as deductions under our statute, and those expenses which are allowable. It is recognized that the costs of administration, amortization and smelting should be paid out of the mining operation at Blue Hill if it is to be a paying proposition, but at the same time it should be recognized that these costs should not be deducted in such a manner as to deprive the State Of Maine of the royalty to which it is legally entitled. Therefore, there should be a clear cut separation of mining expenses and the expenses allowable as deductions under the Maine Mining Law.

QUESTION #3:

Will the filling of Second Pond with "tailings" from the crushing process adversely affect the rights of the State to royalties on the mineral deposit beneath what was formerly Second Pond?

ANSWER:

No.

OPINION:

Ownership of a body of water includes the bed, i.e., where the State owns a great pond it also owns the bed of that pond and if the water is drained from the pond the State still owns the land that constituted the bed of that pond. Opinion of the Justices, 118 Me. 523; Flood v. Earle, 145 Me. 12. See also the opinion of George A. Wathen, Assistant Attorney General, April 13, 1959.

Paul A. MacDonald

-6-

October 29, 1963

Therefore, the filling of Second Pond with "tailings" from the crushing process, while affecting its character as a body of water, will not affect the rights of the State of Maine to royalties on minerals located in the soil beneath what was formerly a great pond.

Respectfully yours,

Carl O. Bradford
Assistant Attorney General

COB/sif