

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date September 10, 1965

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

From Richard S. Cohen, Asst. Atty. General Dept. " " "

Subject Taxation of Maine Central Railroad Land in City of Auburn

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## FACTS

The Maine Central Railroad owns a right of way running through Auburn, Maine which is 99 feet in width. This 99-foot right of way has been exempted from taxation for many years. The Maine Central Railroad contends that the railroad is exempt from property taxation for the entire 99 feet, that area being that which is referred to in 36 M.R.S.A. §561 as the "located right of way" of the railroad.

## QUESTION

Whether or not the "located right of way" of the Maine Central Railroad in the city of Auburn is 66 or 99 feet?

## ANSWER

The "located right of way" of the Maine Central Railroad in the city of Auburn which is exempted from taxation includes a 6-foot strip or 99 feet.

## LAW

"The buildings of every railroad corporation or association, whether within or without the located right of way, and its lands and fixtures outside of its located right of way, are subject to taxation in the place in which the same are situated, as other property is taxed therein, and shall be regarded as nonresident land."  
36 M.R.S.A. §561.

## REASONS

In reaching a conclusion as to what the exempted "located right of way" as described in 36 M.R.S.A. §561, supra, is, there must

Ernest M. Johnson, State Tax Assessor September 10, 1943

first be a determination made as to how "located right of way" should be or is defined under the particular statute we are here concerned with. The only Maine Supreme Court case dealing directly in point with this matter is Portland Terminal Company v. Assessors of Portland, 134 Maine 434. In that case the railroad claimed that the land in question, which was acquired for depot grounds, side tracks, storage tracks, repair shops, freight houses, and for other such uses as are vital to the operation of a railroad terminal, was exempt from local municipal taxation on the grounds that this particular land was within the "located right of way" as set out in the exempting statute. The statute then in question was substantially similar in substantive content to the one we are here concerned with today.

In perusing the general railroad laws pertaining to the taking of land for railroad purposes from the inception of those statutory provisions in 1836 until 1930, the Court came to the conclusion that what is referred to as the "located right of way" of the railroad was the four-rod strip referred to in all of the general statutes. The Court states that it is apparent that the former provisions of the law providing for the filing of the location of the railroad with the County Commissioners referred to nothing but the original location or under the general laws the four-rod strip then referred to. It was not until 1871 in the revision of statutes that an important change took place. At that time a provision was inserted in the general railroad laws as to the taking of land, a different procedure for the taking of land for side-tracks and buildings and for the taking of land for the use of the main line. This was the first time a distinction was made between land taken for the main "roadway" as it was then called and land for other purposes. The Court concluded that the purpose of distinguishing between the four-rod strip or main line and land outside it were deliberate for purposes of taxation. When in 1881 the words "located right of way" were used as designating such land as should be exempt from taxation the intent was to refer to the four-rod strip set out in the general statute.

In concluding as to the Court's rationale in the Portland Terminal case it can be said that the Legislature has regarded the right of way of the railroad as something distinct from its terminal facilities and from property acquired for incidental purposes. The methods prescribed for its taking and location were different from those designated for the taking of property for the latter purpose. When the railroad land exemption was enacted, the only land exempted was for the main roadway and not as in the Portland Terminal case, land employed for terminal facilities, and taken under the statute for that specific purpose.

Ernest H. Johnson, State Tax Assessor      September 10, 1965

In the instant case, the particular railroad land we are here concerned with was originally allowed to be taken by the Androscoggin and Kennebec Railroad by the private and special laws of Maine, 1843. In this particular grant the Androscoggin and Kennebec was empowered to locate its roadway from some point of intersection of the Atlantic and St. Lawrence Railroad easterly through the town of Lewiston, . . . , etc. It can be seen from the included map that the roadway we are here concerned with had its inception at Danville Junction and then went easterly through what are now the cities of Auburn and Lewiston. On September 9, 1862, the Androscoggin and Kennebec and the Penobscot and Kennebec merged into what is now the Maine Central Railroad Company. It was further set out in the Acts of 1843 that the corporation had the right to acquire land for location of the railroad, provided, however, that the land should not exceed six rods in width.

It is clear from the language of this Act that the land allowed to be taken for the original location of the roadway was six rods and not the four rods as normally allowed to railroads constructing under the general railroad statutes. Here, as in this particular factual situation, we have a special law applicable to a certain situation as against a general law on the same subject matter, the private and special law is controlling.

This particular six-rod location, when taken was filed and approved by the County Commissioners and the Register of Deeds.

Even though it must be borne in mind in construing this statute that taxation is the rule and exemption the exception and that the intention of the Legislature to exempt property from taxation must be expressed in clear and unambiguous language, it is an inescapable fact in reading the special incorporation law here involved, that the Androscoggin and Kennebec Railroad now the Maine Central Railroad was given six rods as its located right of way as to the particular strip of land in question.

BSC:epd

# STATE OF MAINE

Inter-Departmental Memorandum Date July 14, 1965

To Richard Cohen, Assistant Attorney General Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

Subject Taxation of Maine Central Railroad land in City of Auburn

The Maine Central Railroad owns a right of way running through the city of Auburn which is 99 feet in width (see attached tax maps). This 99 foot right of way apparently has been excepted from taxation for many years, and the railroad contends that it is exempt from taxation as the "located right of way" of the railroad. (See letter from Scott W. Scully, General Attorney of Maine Central Railroad Company, dated June 25, together with accompanying memorandum of law, attached hereto).

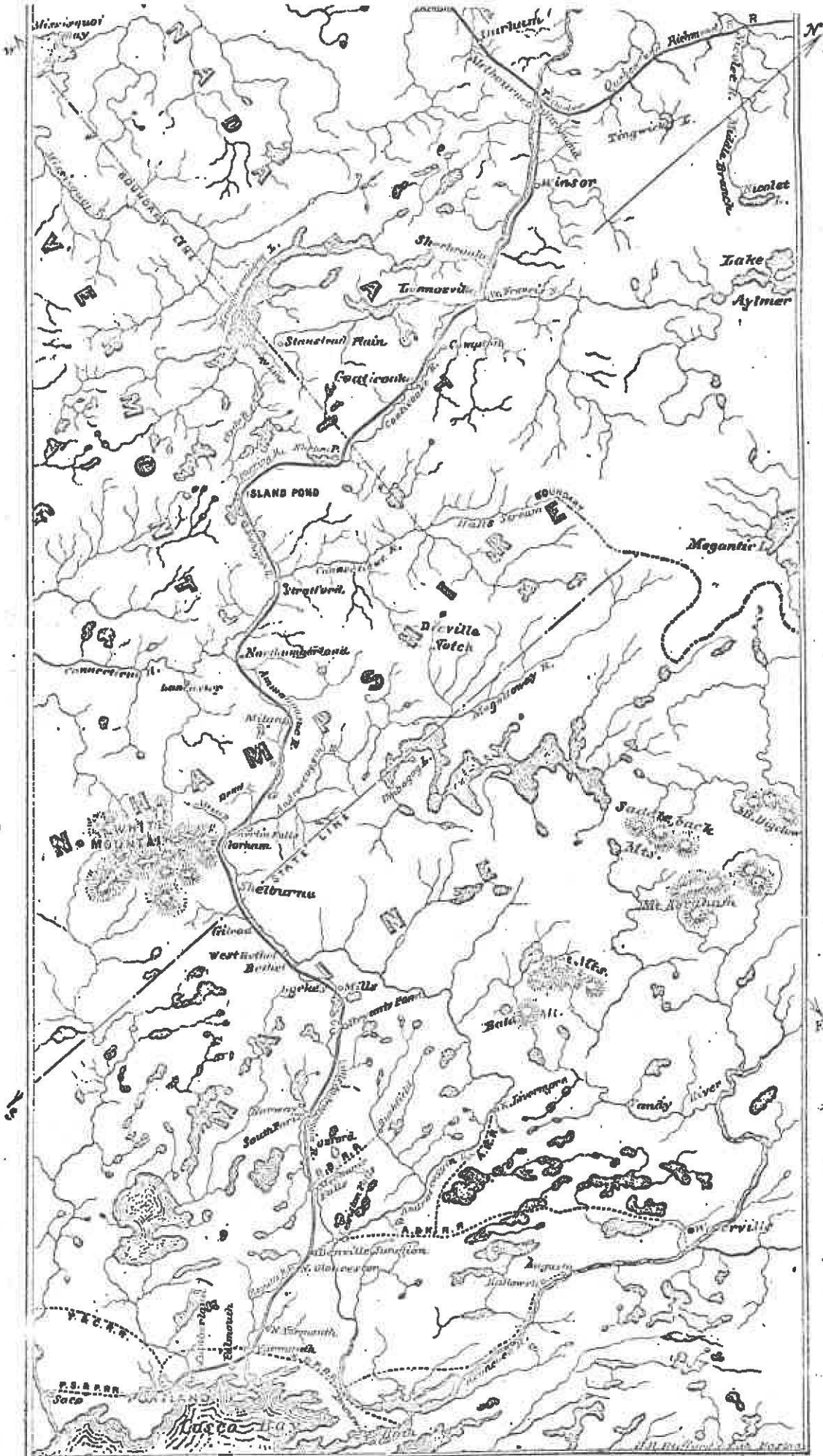
David Brown of this office and the assessors of the city of Auburn now raise the question whether the entire 99 feet (that is, six rods) is exempt, or only 66 feet (that is, 4 rods). You will find Mr. Brown's argument set forth in his July 9, 1965 memorandum addressed to me.

The applicable tax statutes are Title 36, Section 561, which subjects to local taxation the buildings of every railroad, and the land and fixtures of every railroad "outside of ~~the~~ located right of way . . .", and Title 36, Section 2623, which provides that the gross receipts tax levied by the State on railroads, together "with the tax provided for in section 561", shall be in place of all taxes upon the railroad and its property. The leading court decision is probably that cited by Mr. Scully, Portland Terminal Company v. Hinds, 134 Me. 434. If there is more information you need, please let me know.

Will you please advise whether the "located right of way" of the Maine Central Railroad in the city of Auburn, the land within which is exempt from taxation, is restricted to a strip 4 rods wide; or whether the "located right of way" in this instance includes the entire 6 rod strip.

*E.H.J.*

EHJ:J



**ROUTE BETWEEN**  
**PORTLAND, THE WHITE MOUNTAINS AND MONTREAL;**  
**BY THE**  
**ST. LAWRENCE AND THE ST. L. & ATLANTIC RAILROADS.**