

MAINE STATE LEGISLATURE

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FIFTY-FIFTH LEGISLATURE.

HOUSE.

No. 138.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES }
January 26, 1876. }

Ordered, That the Justices of the Supreme Judicial Court be required to furnish for the information of this House an answer to the following question :

Has the Legislature authority under the Constitution of the State to assess a general tax upon the property of the State for the purposes of distribution under "An Act to establish the School Mill Fund for the support of Common Schools," approved February 27, 1872?

Read and passed.

ORAMANDAL SMITH, *Clerk*.

A true copy—Attest :

ORAMANDAL SMITH, *Clerk*.

BANGOR, February 9, 1876.

SIR:—To the question proposed by the House of Representatives, we have the honor to answer as follows :

By the constitution of this State, art. 4, part 3, § 1, the Legislature has “ full power to make and establish all reasonable laws and regulations for the defence and benefit of the people of this State, not repugnant to this constitution, nor to that of the United States.”

In the constitution, it is declared that “ a general diffusion of education is essential to the preservation of the liberties of the people.” By its very language, it would seem that the “ general diffusion of education ” was to be regarded as especially a “ benefit ” to the people. If so, then the Legislature has “ full power ” over the subject matter of schools and of education to make all reasonable laws in reference thereto for “ the benefit of the people of this State.” The power existing, its reasonable exercise, having due regard to the several provisions of the constitution, is subject only to legislative discretion.

The power of taxation “ for the defence and benefit of the people ” is limited only by the good sense and sound judgment of the Legislature. If unwisely exercised, the remedy is with the people. It is not for the judicial department to determine when legitimate taxation ends, and spoliation by excessive taxation begins.

Education being of benefit to the people, and taxation being incidental and essential to its successful promotion, the mill-tax, being for educational purposes, must be regarded as constitutional, unless in some other portions of the constitution there be found a clause restricting or forbidding the raising of money by legislative action for educational purposes—thereby limiting the power naturally inferable from § 1, which has been already quoted. The limitation must be upon that section ; for the money being raised, there is no where to be found, an express or implied inhibition of the appropriation of money when raised, to educational purposes.

By article 8, "to promote this important object"—education—"the legislature are authorized, and it shall be their duty to require the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools." But this article is mandatory, not prohibitory.

It imposes duties upon the Legislature. It is affirmative, not negative in its character. The Legislature cannot avoid the discharge of this duty. It cannot constitutionally absolve the towns from making at their own expense suitable provision for this primary and indispensable foundation of all good government. The Legislature are by proper enactments, to require the towns to make suitable provision for the support of public schools, and the towns are, at their own expense, to comply with those enactments. Neither can escape from the performance of their several and respective obligations.

But what is making "suitable provision" by the towns, "at their own expense for the support and maintenance of public schools?" By whom is the amount for that purpose to be fixed? Not by the towns, for if left to them, there would be no uniform and definite rule. The "suitable provision" in such case would be a variable quantity, an indefinite and contingent provision, dependent upon the varying wealth of the respective towns and upon the fluctuating views of their voters, or the majority of their voters. It is manifest that a general law upon the subject is required. Accordingly, from the first institution of the government to the present day, the general control of schools, and the determination of what shall be a suitable provision by the towns for their support, has been fixed by legislative enactment. In 1821, by chap. 117, § 1, towns were required annually to raise and expend for the maintenance and support of schools therein, "a sum of money, including the income of any incorporated school fund, not less than forty cents for each inhabitant, the number to be computed according to the next preceding census of the State, by which the representation thereof has been apportioned." In the revision of 1840, chap. 17, § 6, the amount required was not to be less than forty cents for each inhabitant, the number to be ascertained as in 1821; but this was to be "exclusive of the income of any corporate school fund, or of any grant from the revenue or funds of the State, or of any voluntary donation, devise or be-

quest, or any forfeiture accruing to the use of the town." In the revision of 1857, chap. 11, § 5, the amount required was not less than the sum of sixty cents for each inhabitant upon the mode of ascertaining the number of inhabitants, and exclusive of other sources of revenue, as in 1840. In the revision of 1871, chap. 11, § 5, not less than one dollar for each inhabitant, to be ascertained as in the two preceding revisions, and subject to the exclusion of all other sources of revenue, whether from the revenue or funds of the State, or from any other source whatever. In 1872 the sum for each inhabitant was reduced to eighty cents.

A "suitable provision" must be one general in its character, and having regard to all the people of the State, in the aggregate. A "suitable provision" is not necessarily a sufficient provision. A sufficient provision must be one adequate to meet the educational demands of the people. It may therefore become necessary to supplement what is a suitable provision by adding thereto what will make it a sufficient one. Have, then, the Legislature the right to do this? There is no express prohibition to their so doing. The right to so do exists by art. 4, p. 3. s. 1, and no prohibition to the contrary is to be found in art. 8.

By recurring to the debates of the convention by which the constitution was formed, it will be seen that it was anticipated that State aid was to be granted for the support of schools, in addition to the suitable provision to be required by art. 8, of towns. In considering the question presented for our opinion, the views of the framers of the constitution and the subsequent practical construction of its provisions, are entitled to much weight. Perley's Debates, 206, 207. It will be seen by recurring to the legislature of the State that what was expected to be done was done, and that right speedily.

In 1828, c. 403, "an act providing for the support of education" was passed. By this act twenty townships were to be sold and the avails were to constitute a permanent fund to be reserved for the benefit of primary schools." At the same time, and by the same act, any moneys arising from the Massachusetts claim, so called, after paying the debts of the State, were to be added to the school fund. Now whether the lands of the State, or the moneys of the State are appropriated for the benefit of the primary schools, can make no difference in principle. In either event, the

“suitable provision” established by the legislature is supplemented by the funds of the State.

In 1850, twenty-four half townships of the undivided lands of the State were reserved, the proceeds to be “appropriated as a permanent fund for the benefit of common schools.”

In 1833, c. 82, with the exception of one thousand dollars for Parsonsfield Academy, the tax on the several banks in the State was “appropriated to the support of primary schools.”

It will thus be perceived that a school fund in addition to, and in aid of, the “suitable provision” required by the constitution, derived from various sources, and acquired at different times, was established, almost contemporaneously with the existence of the State, and has continued to the present time. It matters not, whether this fund was derived from the sale of the lands of the State, from taxes on its chartered banks, from State funds already in the treasury, or to be raised by taxation upon the real and personal estate of its inhabitants. Neither does the general expediency of this legislation as regards the well being of schools, nor whether due provision has been made to guard the funds thus acquired from being diverted from the object for which they are raised, affect the question of constitutionality. It is for the legislature to provide the necessary security that the bounty of the State be not misapplied, and to impose sufficient penalty in case of its misapplication.

The tax in question is like that for the support of government. It is for the benefit of the *whole* people. All the property in the State is assessed therefor according to its valuation. All contribute thereto in proportion to their means. It is a tax for a public purpose, not one, by which one individual is taxed for the special and peculiar benefit of another. All enjoy the beneficial results of education, and the better order and government arising therefrom, irrespective of the amounts respectively contributed by each to these most important objects.

All acts of the Legislature are presumed to be constitutional till the contrary is clearly shown. No court will declare an act unconstitutional, when its constitutionality is a matter of doubt. In relation to the question proposed, we answer that the Legislature has authority under the constitution, to assess a general tax upon the property of the State for the purpose of distribution

under "an act to establish the School Mill Fund for the support of Common Schools, approved Feb. 27, 1872."

JOHN APPLETON,
C. W. WALTON,
J. G. DICKERSON,
WILLIAM G. BARROWS,
CHARLES DANFORTH,
WM. WIRT VIRGIN,
JOHN A. PETERS,
ARTEMAS LIBBEY.

Hon. FREDERICK ROBIE,

Speaker of House of Representatives, Augusta.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
February 21, 1876. }

Received, and on motion of Mr. TALBOT of East Machias,
ordered printed.

ORAMANDAL SMITH, *Clerk.*