

102 Me. 527, *; 66 A. 726, **;
1907 Me. LEXIS 88, ***

**QUESTIONS SUBMITTED BY THE HOUSE OF REPRESENTATIVES MARCH
14, 1907, WITH ANSWERS OF THE JUSTICES OF THE SUPREME JUDICIAL
COURT THEREON.**

[NO NUMBER IN ORIGINAL]

SUPREME JUDICIAL COURT OF MAINE

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March 14, 1907, Decided

CORE TERMS: railroad, taxation, excise tax, taxed, franchise, lawfully, personal property, present law, rolling stock, cash value, gross receipts, gross earnings, forbidden, repugnant, plainly, fixtures, levied, stock, bed, apportioned, exemption, exempt, fundamental principle, license taxes, respectfully, measured

HEADNOTES

1. An excise tax prohibiting the assessment of all other taxes upon railroads, their property or stock according to their just value, is not plainly forbidden by any provision in the Constitution and is therefore constitutional.

2. A tax can be lawfully levied upon the franchise of a railroad and also a separate tax upon the road bed, rolling stock and fixtures at their cash value.

3. The present law whereby railroads operating in this State are taxed upon a percentage of their gross receipts is not repugnant to the provisions of the Constitution of this State relative to taxation. The tax is an excise tax upon the franchise and measured as to amount by the gross earnings of the railroad.

OPINION

[**1] [*527] [**726] IN HOUSE OF REPRESENTATIVES, February 7, 1907.

Ordered, That the Justices of the Supreme Judicial Court are hereby respectfully requested to give to this House, according to the provisions of the Constitution of this [**727] State in this behalf, their opinion on the following questions:

First. Is an excise tax prohibiting the apportionment and assessment of all other taxes upon railroads, their property or stock according to their just value, constitutional?

Second. Can a tax be lawfully levied upon the franchise of a railroad, and also, a separate tax upon the road bed, rolling stock and fixtures at their cash value?

[*528] Third. Is the present law whereby railroads operating in this State are taxed upon a percentage of their gross receipts repugnant to the provisions of the Constitution of this State relative to taxation?

House of Representatives, March 14, 1907.

Read and passed.

E. M. THOMPSON, Clerk.

STATE OF MAINE.

TO THE HOUSE OF REPRESENTATIVES:

In obedience to the Constitution the undersigned Justices of the Supreme Judicial Court individually herein give their opinion required by, and upon the questions stated in, the order [***2] of the House of Representatives passed March 14, 1907.

It is a fundamental principle of constitutional law that the legislative power over taxation for public purposes, including all questions of what shall be taxed or exempted from taxation and all questions of kinds, forms and modes of taxation, 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.

The only provision in the Constitution of this State relating to the exercise of the legislative power of taxation is that in sect. 8 of Art. IX as follows: "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." This provision simply requires that any tax which shall be lawfully imposed upon any kind or class of real or personal property shall be apportioned and assessed upon all such property equally, etc. *Portland v. Water Co.*, 67 Me. 135. It does not require the legislature to impose taxes upon all the real and personal [***3] property within the State of whatever kind and to whatever use applied. The legislature may, nevertheless, determine what kinds and classes of property shall be taxed

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and what kinds and classes shall be exempt from taxation. It has exercised [*529] this power of exemption frequently and continually, without question, since the adoption of the Constitution. *Portland v. Water Company, supra*. See the eleven paragraphs of section 6 of chapter 9, R. S., for numerous instances of such exemptions. It is now too late to question the power.

Nor does the constitutional provision 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. It can subject persons and corporations to both or either kinds of taxation, or exempt them from either kind.

Further, the legislature can adopt such mode, or measure, or rule as it deems best for determining the amount of an excise or license tax to be imposed, so that it applies equally to all persons and corporations subject [***4] to the tax. It may make the amount depend on the capital employed, the gross earnings, or the net earnings, or upon some other element.

Applying the foregoing propositions to the questions submitted, it is our opinion,

First,--that an excise tax prohibiting the assessment of all other taxes upon railroads, their property or stock according to their just value, is not plainly forbidden by any provision in the Constitution, and is therefore constitutional.

Second,--that a tax can be lawfully levied upon the franchise of a railroad and also a separate tax upon the road bed, rolling stock and fixtures at their cash value.

Third,--that the present law whereby railroads operating in this State are taxed upon a percentage of their gross receipts is not repugnant to the provisions of the Constitution of this State relative to taxation. The tax is an excise tax upon the franchise and measured as to amount by the gross earnings of the railroad.

In support of the above opinion we cite the following authorities: *State v. Western Union Telegraph Co.*, 73 Me. 518. *State v. Maine Central R. R. Co.*, 74 Me. 376. *Maine v. Grand Trunk Ry. Co.*, [*530] 142 U.S. 217. [***5] *Commonwealth v. N. E. Slate & Tile Co.*, 95 Mass. 391, 13 Allen 391. Cooley on Taxation (2d Ed.) 232. *Northampton Co. v. Coal Co.*, 75 Pa. 461.

March 20, 1907.

Respectfully your obedient servants,

LUCILIUS A. EMERY,

WM. P. WHITEHOUSE,

SEWALL C. STROUT,

ALBERT R. SAVAGE,

FREDERICK A. POWERS,

HENRY C. PEABODY,

ALBERT M. SPEAR,

CHARLES F. WOODARD.