

**BELFAST AND MOOSEHEAD LAKE RAILROAD PRESERVATION SOCIETY
vs. TOWN OF UNITY
PETITION #335
November 6, 2007
10:0 A.M.
(TAPE 1-A)**

PRESENT: Waldo County Commissioners John M. Hyk, Chairman; Amy R. Fowler and Donald P. Berry, Sr. Present with the Commissioners was Petitioner Robert LaMontagne, President of Belfast and Moosehead Lake Railroad Preservation Society along with Defendants Town of Unity Selectmen Margaret Wilcox, Ronald Rudolph and James Kenney and Unity Assessor Max Gillette. Recording the minutes was County Clerk Barbara Arseneau, assisted by Deputy County Clerk Veronica Stover.

Commissioner John Hyk opened the hearing by reading the rules of the deliberations.

J. Hyk: I don't believe we will be taking any testimony today. We are not reopening this hearing; we are just deliberating it further. Thank you so much.

A. Fowler: We have been battered. I'm saying it like that to you all, [the Petitioner and Defendants] but I'm not talking to you. The battery of information that we have gotten is awesome. I can truly say I've ripped my hair out, as I know that you guys both [the Commissioners] have also. It's brought up incredible points; just one for example – I've got several highlighted. In regards to the "scientific and literary" aspect of "charitable and benevolent," "scientific could be construed meaning, "Devoted to the sciences generally, or some department of science." Literary is usually associated with schools and colleges. Historic preservation and museum organizations do not fit in either one of those categories. I found that interesting. There's a lot of information on that. The other key factor that really made me study through some more of this information was the tax exemption and tax liability general rule, which states that the rule because of exemption from taxes places an equivalent burden on the remaining tax payers because of the loss of tax revenue. That makes me – that makes me quite nervous. Um – Don, I'll let you ramble for a second because I have flags everywhere on these.

D. Berry, Sr.: Me ramble? (Laughing.) I have spent an awful lot of time reading legal opinion from both sides and from down the middle and doing more research. The thing, and a couple of points: First of all, there are a series of issues that, and points, the so-called check-list of requirements for tax exemption and looking at some of those points and moving forward from there, one of the things – and it was a point within the case – was the Federal 501-C3 income tax exemption may or may not be relevant to determining if an organization is exempt from property tax purposes. Although organizations may qualify for special federal income tax treatment as 501-C3's, there's not direct correlation between the federal tax status and the tax exempt status for property tax purposes under

Maine law. And so, just taking that one point right there, eliminates the 501-C3 as far as I'm concerned...

A. Fowler: Right. I've put that right aside.

D. Berry, Sr.: ...from the process. Another point: I could find nowhere, nor from legal opinion; there is no Maine case that has addressed to date whether museums and historic preservation societies are educational or charitable organizations suitable for tax exemption.

A. Fowler: Right.

D. Berry, Sr.: However, on the other side of the coin, there is a New Hampshire case that determined the museum offering historic preservation and exhibits to the public should be deemed tax exempt. And now the Court of Maine may follow the Portsmouth Historic against Portsmouth case, but one of the big cases in the State of Maine is this Christian Fellowship case vs. Limington and some of the items from that. If we were so inclined, then we could remand this matter back to the Selectmen.

A. Fowler: Oh, yeah! (Laughing.)

D. Berry, Sr.: We just had a case this morning that was remanded back to us from Superior Court and so we could do that with the evidence that we've gathered as far as information. It would not give away our authority to do that – to do this sitting here as a court in this session - but I actually, at this point in time, after just spending hours looking at testimony furnished from multiple sources. We have researched through our lawyer, you people have researched through your lawyer to us; we have researched through Maine Municipal and it comes down to the fact that I, at this point in time – in my own feeling – do not believe that it satisfies the quote-unquote “checklist” for tax exemption. And so that's my thoughts at the present time.

A. Fowler: As I say, I think Don has pretty much summed up every – I mean – we have literally tore our hair out on this case. I have spoken with Maine Revenue Service more than I care to admit; both Mike Rogers and Dave Ledew from Property Tax Division. I have also talked with other towns that have dealt with this problem – the Town of Wells – I've spoken to them; they have an antique auto museum – trying to do a comparison. So this was not a decision that was not reached easily. I mean, we have tried to check out every possible avenue and angle and I agree with Don at this time. I do not feel that it is, I won't say “worth” or “in line” for the abatement it's requesting.

J. Hyk: I have nothing further.

D. Berry, Sr.: Well my last statement here is the fact that I think the State – we were talking about State law before – I think State law is so vague...

A. Fowler: And it admits that in here that State law is so vague with regards to “charitable and benevolent” and then when it speaks of that it has never dealt with or handled a museum or historical preservation society, it’s just very interesting. It’s like, you know, they create these things but then there’s this huge loophole. As I say, and the other big factor that really bothered me is the burden towards the remainder of the tax payers, which is a large portion.

D. Berry, Sr.: So, at this point, if you are ready for a motion, I will make it.

J. Hyk: I most certainly am ready.

****D. Berry, Sr. moved, A. Fowler seconded to deny the abatement request in this case.**

J. Hyk: O.K., so moved and seconded to deny. Before we vote, is there any further discussion?

D. Berry, Sr.: I think the only thing here is the law is so vague with this in the State of Maine that someday somebody will walk this thing to court and maybe get it straightened out.

J. Hyk: I just want you [the Petitioner and Defendants] to know that we have agonized – that’s the word I’d like to get into the record – over this. We’ve really worked hard at it and we even spent some of your hard-earned tax dollars to get some legal advice on it. I think we’ve done a great job, if anybody else thinks so...

A. Fowler: As I say, but it has - it has been so researched. I have talked to some incredible people who I will continue to be in contact with because they’re very anxious. You need to share information that you can, and they’ve been very helpful to me also. And I has say, we have – I have a nice file.

J. Hyk: I think that this case could go either way. These ladies and gentlemen [the other two Commissioners] – I think it’s even closer than they think it is. And we are going to make this information available to both of you because we have information that neither one of you [Petitioner and Defendants] have and I think it may be helpful to both of you in whatever your endeavors are going to be and it may be helpful to you [the Defendants] since you have so many of these up in Unity – more than your share, I would guess – you may find the information useful to look at to determine some other things.

With that in mind, if there’s any further argument or discussion – I’ll call the vote. All in favor? All opposed? The motion passed unanimously.

J. Hyk: It’s a vote. So, there you go. Barb, can you make this information available to the – hold on Bob – before you go anywhere...

A. Fowler: I’ve scribbled all over mine.

D. Berry, Sr.: Same here. Mine's all highlighted. Maybe you people want this thing – it's all highlighted. (Laughing.)

M. Gillette: Most of the things you've quoted in here was exactly what I got from MMA, although I have not talked to them when we came. After our first meeting, I did talk with them and they sent this pile of stuff.

A. Fowler: Right.

M. Gillette: And I'm sure it's part of what you were quoting came from them, for I have the same thing.

A. Fowler: Did MMA provide you with case laws?

M. Gillette: A lot of them.

A. Fowler: We have several very good case laws that were recorded and stuff...

M. Gillette: Case law kind of put me to sleep! (All laughed.)

J. Hyk...that's partly – that's partly who we used.

R. LaMontagne: I would appreciate any of your notes or anything that led you to your findings, and, of course, the minutes of this meeting, if you would be so kind to.

J. Hyk: As we will.

B. Arseneau: O.K. We will send it all.

J. Hyk: There are no notes. I have no notes.

A. Fowler: I have my scribblings or stuff – you're more than welcome to any of that.

R. LaMontagne: Right the material you used; whether you noted it – I'd still appreciate that...

A. Fowler: Certainly.

R. LaMontagne... for background information that led you to that decision, would be very kind.

J. Hyk: Well, most of it is in right in that...Most of it is in here...

A. Fowler: Yes, but Don and I have highlighted some areas.

J. Hyk: And your discussion [A. Fowler] with the State, the State people.

R. LaMontagne: Yup, yup that would be great. I would really appreciate it.

A. Fowler: Very good, thank you.

M. Gillette: Thank you very much.

R. LaMontagne: Thank you.

Respectfully submitted by *Barbara L. Arseneau*
Waldo County Clerk