



“ ‘advancement is a completed gift by the ancestor, to be accounted by the recipient as his share or part of his share in distribution . . . and is no part of the ancestor’s estate at his death. . . . The heir who has received an advancement, in accounting for it according to its value, as a part or the whole of his share, receives so much less of the residuum of the estate than he otherwise would.’ ” *Wentworth v. Wentworth*, 75 N.H. 547, 549, 78 A. 646, 648 (1910). Reading these borrowings or debts as advancements further promotes the intention of John Shirley in providing no direct benefit other than hand or power tools to his son Robin. The indirect benefit of relieving Robin of the responsibility of assisting in providing for his children’s education at the expense of Kearsarge Masonic Associates does not consistently harmonize with the testamentary scheme or general intention of the will.

The probate court is advised that the testator’s intent was that a bequest from the residuum of the estate to the lodge be made whether or not any sums were collected from Robin Shirley.

Exception sustained; remanded.

All concurred.



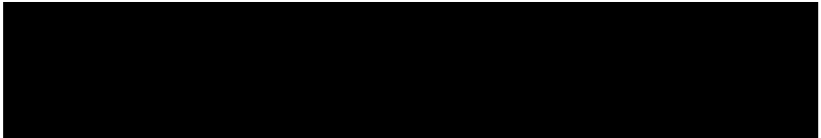
Portsmouth District Court
No. 7730

THE STATE OF NEW HAMPSHIRE

v.

RICHARD HUTCHINS
ROBERT BINNETTE
ARTHUR COLBY

November 16, 1977



nated routes. The arrests were made on a portion of Route 1, a Class 1 highway, which is within the city limits but lies outside the compact zone. Defendants challenged the city's jurisdiction to enact the ordinance; the question was transferred without ruling by the Portsmouth District Court (*Taylor, J.*).

■ The General Court has given the commissioner of public works and highways the authority to regulate "the use of Class 1 highways in . . . cities outside the compact portions thereof as determined by him." RSA 249:5 (Supp. 1975). Were the commissioner to promulgate regulations under the grant, any conflicting municipal ordinance would be voided, RSA 47:17 XV (Supp. 1975); see *State v. Boisvert*, 117 N.H. 291, 371 A.2d 1182 (1977) (per curiam); *State v. Jenkins*, 102 N.H. 545, 162 A.2d 613 (1960); *State v. Paille*, 90 N.H. 347, 9 A.2d 663 (1939). But he has yet to exercise his authority in this situation. Consequently any city ordinance not inconsistent with state statutes may stand unless the legislature has clearly manifested an intent to preempt the field of highway regulation. 6 E. McQuillin, *Municipal Corporations* § 21.34, at 269 (3d ed. 1969); see, e.g., *Keene v. Gerry's Cash Mkt., Inc.*, 113 N.H. 165, 168, 304 A.2d 873, 875-76 (1973); *Davy v. Dover*, 111 N.H. 1, 4, 273 A.2d 849, 851 (1971).

■ We find no such intent. RSA 249:5 specifically provides that the commissioner "may" regulate highways. Although the word "shall" would not necessarily denote preemption, its absence is evidence that the General Court did not intend to delegate exclusive power over highways to him. Furthermore, the legislature has specifically empowered municipalities to regulate the use of vehicles on particular highways within their limits, which includes the power to "exclude such vehicles altogether from certain ways . . ." RSA 47:17 VIII. The city also may regulate the conveying of dangerous materials. RSA 47:17 IX.

■ We conclude that in the absence of positive regulation by the commissioner of public works and highways, the city of Portsmouth was free to enact reasonable ordinances regulating the transportation of hazardous materials within the city limits.

Remanded.

LAMPRON, J., did not participate in the decision of this case; the others concurred.