

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

January 12, 1961

To: Earle R. Hayes, Executive Secretary of Maine State Retirement System

Re: Suggested Constitutional Amendment

We have your memo of December 29, 1960, in which you state that the Board of Trustees would like our opinion with respect to the following language of the suggested Constitutional amendment, having in mind the purpose of protecting the trust funds of the Maine State Retirement System:

"All of the assets, and proceeds or income therefrom, of the Maine State Retirement System or any successor system and all contributions and payments made to the System to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes."

We would have no comment as to the necessity for such provision, but are of the opinion that as worded the amendment would adequately achieve the purpose desired by the Board.

JAMES GLYNN FROST

Deputy Attorney General

January 17, 1961

To: Honorable Ralph M. Lovell

House of Representatives

State House

Augusta, Maine

Re: Exempting Industrial Property from Taxation

Dear Mr. Lovell:

We have your request for an opinion as to whether a bill exempting industrial property from taxation would or would not be constitutional. This bill, proposed as an amendment to Chapter 91-A, Section 10, subsection II, would exempt for a period of ten years industrial property locating or relocating in a municipality.

Under the Constitution of the State of Maine, all taxes upon real and personal property must be apportioned and assessed equally according to their just value. *Constitution of Maine*, Article IX, Section 8. Furthermore, no resident of the State of Maine shall be deprived of his property except by judgment of his peers or the law of the land. *Constitution of Maine*, Article I, Section 6.

The question here then is whether or not the proposed amendment would be unconstitutional as constituting an inequitable apportionment of taxes and thus the deprivation of private property without due process of law.

Chapter 91-A, Section 10, subsection II, contains a list of certain properties exempted by law by the imposition of any tax. The proposed amendment would add certain industrial properties to this list which is now composed of certain charitable, governmental and educational institutions. Various proposals and enactments through the years have been aimed at granting tax relief in order to

entire industries to move into a certain locality, and each of these attempts have been held unconstitutional when tested in the law court. In *Brewer Brick Co. v. Town of Brewer*, 62 Me. 62 (1873), a law almost identical in form was struck down. In this case the Town of Brewer, pursuant to legislative authority, voted to exempt the Brewer Brick Co. from the payment of taxes for a period of ten years. This was done in order to encourage the company to build a plant in Brewer. The second year after this vote was passed the town decided that it would no longer honor the agreement and taxed the Brick Co. along with all other businesses. The company paid under protest and brought suit to recover this tax. In holding the abatement of tax unconstitutional, the law court pointed out that such a measure would place a great burden on competitors in receiving such a benefit and would also force the taxpayers of the town to support a private enterprise.

“Of two competing capitalists, in the same branch of industry, one goes into the market with goods relieved from taxes, while the goods of the other bear the burden. One manufacturer is taxed for his own estate and for that which is exempted, to relieve his competing neighbor, and to enable the latter to undersell him in the common market; — a grosser inequality is hardly conceivable!” *Brewer Brick Co. v. Town of Brewer*, 62 Maine 62, 75.

The latest opinion involving this question of industrial exemption was given by the Justices of the Supreme Court in 152 Me. 440. The question behind this opinion was whether or not an act relating to an industrial development in the City of Bangor would be constitutional. The court was of the opinion that, since the benefit would go to private industry, the act involved a private rather than a public purpose and that the city could neither raise money by taxation nor acquire property by eminent domain for such a purpose.

“That such a course could well be of great value to the particular enterprise and so to the city or community would not affect the application of the law.

“The test of public use is in the advantage or great benefit to the public. ‘A public use must be for the general public, or some portion of it, who may have occasion to use it, in a use by or for particular individuals. It is not necessary that all of the public shall have occasion to use. It is necessary that everyone if he has occasion, shall have the right to use.’ ”

It is our opinion that the act in question would involve the use of public tax monies for private purposes and would thus violate the several provisions of the State Constitution referred to above.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General

January 18, 1961

To: R. W. Macdonald, Chief Engineer of Water Improvement Commission

Re: Interstate Pollution Control Work

We have your request for an opinion concerning the power of the Water