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February 27, 1975

Honorable James B. Longley
Governor, State of Maine
State House
Augusta, Maine 04330

Dear Governor Longley:

This replies to your memorandum request of February 18, 1975.

Your first question asks whether or not the counties in Maine have the right to appropriate funds and levy taxes without the approval and consent of the legislature. The answer to that question is negative.

The corporate powers of a county are derived entirely from legislative enactments. State of Maine v. Vallee, 136 Me. 432, 446. Article 5 of Title 30, M.R.S.A. directs the county commissioners to "make the county estimates and cause the taxes to be assessed" (30 M.R.S.A. § 251) and prescribes the procedure therefor.

Your second question asks:

"If county appropriations are subject to legislative approval, does the legislature then have the authority to alter proposed county budgets?"

The answer to that question is affirmative. The county estimates constitute a request for legislative authorization of appropriations. The Legislature has expressly declared that it "shall have the power to change or alter specific line categories within the county estimates." 30 M.R.S.A. § 253-A. However, even in the absence of such a declaration, the Legislature would have such power under Section 1, Part Third, Article IV, Constitution of Maine.

Your third question asks:

"Do the municipalities in Maine have the authority to appropriate funds and levy taxes without the direct approval of the legislature?"

The answer to this question depends upon the connotation attributed to the word "direct." In the interest of clarity, it should first be noted that the power of taxation is vested by the Constitution in the Legislature. See Sections 7, 8 and 9, Article IX, Constitution of Maine. Section 9 provides:

"The Legislature shall never, in any manner, suspend or surrender the power of taxation."

The Legislature may not delegate its legislative power of taxation, except to municipal corporations, so far as is necessary for their own purposes, and in such case, the power must be expressly and distinctly granted. City of Auburn v. Paul, 84 Me. 212.

The Legislature cannot constitutionally transfer to municipal corporations the power of determining on what property real or personal taxes shall, and upon what, they shall not be imposed. Brewer Brick Co. v. Inhabitants of Brewer, 62 Me. 62.

Section 8, Article IX, Constitution of Maine provides:

"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; but the Legislature shall have power to levy a tax upon intangible personal property at such rate as it deems wise and equitable without regard to the rate applied to other classes of property."

All taxes, state, county and municipal, must be levied by the Legislature directly, or under general statutes; and such taxes upon real and personal property must be assessed equally and according to the just value. City of Auburn v. Paul, 184 Me. 212. Such legislation has been enacted. For example, see 36 M.R.S.A. §§ 451, 453, 505, 708 and 709.


Therefore, subject to the foregoing explanation, your third question is answered affirmatively.

Honorable James B. Longley
Page 3
February 27, 1975

I have read Mr. Rogers' letter to you, dated January 28, 1975, and the Brief of the County Commissioners Association on the Status of Maine Counties under the Comprehensive Employment and Training Act of 1973, both of which were enclosed with your memorandum to me dated February 18, 1975. That letter and brief refer to the question of eligibility of counties to be prime sponsors under CETA.

While the preceding comments fully answer the three explicit questions you have posed in your memorandum to me, they are not necessarily dispositive of the county CETA eligibility question.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

cc
JEB/ec