

# MAINE STATE LEGISLATURE

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December 30, 1975

The Honorable Peter W. Johnston  
State Senator  
West Limestone Road  
Fort Fairfield, Maine 04742

Dear Senator Johnston:

I have been asked to respond to your letter of November 25, 1975, addressed to Attorney General Joseph E. Brennan. You have posed a number of questions concerning the potato tax, the Maine Potato Commission [hereinafter the Commission] and the Maine Potato Council [hereinafter the Council].

Questions A(1) and A(2) are very broad. The answers would depend upon the specific purpose of the appropriation of funds (raised pursuant to the potato tax, 36 M.R.S.A. § 4565) by the Commission to the Council. The purposes for which appropriations may be made by the Commission are statutorily set forth in 36 M.R.S.A. § 4571. The Maine Constitution requires, furthermore, that the power of taxation be used only for a public purpose, Article I, Section 21 and Article IV, Part Third, Section 1 of the Constitution of the State of Maine; see Maine State Housing Authority v. Depositors Trust Company, 278 A.2d 699 (Me., 1971); Opinion of the Justices, 131 A.2d 904 (Me., 1957).

You ask in Question A(3) whether the Commission may contract with or appropriate funds to an "organization" for purposes other than "research, advertising or promotion." The answer to this question is affirmative. For example, the Commission could contract with an organization to furnish it (the Commission) with necessary supplies. See 36 M.R.S.A. § 4563-A(5). The purposes for which contracts or appropriations may be made are enumerated in the statute, 36 M.R.S.A. §§ 4561-4572, and are limited thereby.

In Questions A(4) and A(5) you ask whether the Commission may appropriate funds to the Council to (a) "finance the legal claims of potato growers against shippers and processors", (b) "finance lobbying expenses to promote legislation exclusively designed to protect potato growers," and (c) "to pay the salaries of the officers of the Maine Potato Council." As you describe these expenditures they are not

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within any category authorized by statute and are therefore unlawful. Additionally, it appears that public funds are being expended for private purposes, in violation of the Maine Constitution. See State v. F. H. Vahlsing, Inc., 88 A.2d 144 (Me., 1952). We could not, of course, conclude that any particular appropriation or expenditure was unauthorized or for a private purpose without examining all relevant facts.

The answer to question B(1) is affirmative. The Legislature may increase the potato tax without the "approval" of those upon whom the tax is imposed. See Article I, Section 22 and Article IX, Section 9 of the Constitution of the State of Maine; Greaves v. Houlton Water Co., 59 A.2d 217 (Me., 1948).

You ask in question B(2) whether the potato tax is a personal property tax on inventories. "The potato tax is not a tax assessed on an ad volorem basis on the value of potatoes owned, but like the gasoline tax, the use fuel tax, the cigarette tax, and the oleomargarine tax, on the amount of business done in the particular commodity within the state. It is an excise tax and not a property tax and is clearly imposed as an excise tax." State v. F. H. Vahlsing, Inc., *supra*, 88 A.2d at 146.

Very truly yours,

DAVID ROSEMAN  
Assistant Attorney General

DR:mfe