

MAINE STATE LEGISLATURE

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February 26, 1976

Hon. Philip C. Jackson, Senate Co-Chairman
Joint Select Committee on County Government

Hon. Roger V. Snow, Jr., House Co-Chairman
Joint Select Committee on County Government

Gentlemen:

Your letter of February 10, 1976 poses the question: "May the Legislature delegate the power to make final approval of County Budgets to an elected representative board in each county, if the delegation includes specific revenue raising and expending powers, without a constitutional amendment?"

We have reviewed the Maine Constitution, and it is the conclusion of this office that no constitutional amendment would be required as a prerequisite to adoption of such legislation.

The section of the Maine Constitution of most particular concern is Article IX, Section 9, which reads: "The Legislature shall never, in any manner suspend or surrender the power of taxation." No suspension or surrender of the power of taxation occurs as a result of the change in approval of County Budgets from County Legislators to County Finance Committees. The method of budget approval is still subject to control of the Legislature.

As with delegation of budgeting and taxing powers to municipalities, delegation of such power to counties pursuant to legislative enactment remains, in legal contemplation, an Act of the State, Frankfort v. Lumber Co., 128 Me. 1 (1929). In concept no constitutional problem arises from such delegation. In fact it is similar to delegations which have already been granted to municipalities and school administrative districts.

Your letter also enclosed proposed legislation to implement the concept addressed in your letter. The effect of the legislation, and particularly Section 3 thereof, would be to authorize counties to raise or appropriate money for a wide range of generally described governmental purposes.

The ultimate responsibility to pay for such services, except where funded by Federal or State grants, would continue to rest with the municipalities. However, the County Finance Board would effectively establish a tax through the level of program costs it approved.

In delegating legislative authority, the legislative body "must spell out its policies in sufficient detail to furnish a guide which will enable those to whom the law is to be applied to reasonably determine their rights thereunder, and so that the determination of those rights will not be left to the purely arbitrary discretion of the administration." Sucki v. Plavin, 291 A.2d 508, 510 (Me. 1972) Delegation authority must be particularly clear and specific in tax cases, Frankfort v. Lumber, Co. Supra.

Your proposed bill, and particularly Section 3, should be closely examined to assure that the legislative direction as to finance board appropriation and thus, effectively, taxing authority, is sufficiently specific both as to substance and procedures to avoid any question of inadequate delegation to authority.

Sincerely,

JOSEPH E. BRENNAN
Attorney General

JEB:jg