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36 M.R.S.A. § 451 - 2
Uniform Property Tax - Mill Rate
Uniform Property Tax - Legislative Authority

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 2, 1976

Honorable Bonnie Post
Owls Head
Maine 04841

Dear Representative Post:

This responds to your request for an opinion interpreting 36 M.R.S.A. § 451, sub-§ 2. Specifically you ask whether there is any internal inconsistency in that section in (a) its direction to the Legislature to enact, prior to April 1 of each year, legislation establishing a uniform property tax rate, and (b) its subsequent direction specifying that after June 30, 1977, the uniform property tax rate shall be 12.5 mills. In light of those two provisions, you ask will the 12.5 mill rate prevail if no legislation is enacted or is a legislative enactment required in light of the earlier provisions of the statute?

The answer is that the 12.5 mill rate will apply for fiscal year 1977, and thereafter, unless repealing legislation is enacted. No further legislative enactment is necessary for the 12.5 mill rate to prevail.

Discussion:

The question of a potential internal inconsistency within sub-§ 2 of § 451 was, of necessity, examined in connection with development of the two recent opinions provided to you on the subject of the uniform property tax. Based on that examination, it was our view that the 12.5 mill rate prevails for fiscal year 1977 and thereafter unless subsequently changed by legislation. We resolved any inconsistency by construing that the second sentence of sub-§ 2, as directory indicating legislative intention as to the timing and procedures it would use to set the rate. The subsequent provision establishing the 12.5 mill rate was interpreted as mandatory and controlling the legislation.


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A review of the legislative history of this particular enactment confirms this intent. The original legislation in the 1976 Special Session, L.D. 2196, § 4, included the provision indicating the Legislature shall establish the uniform property tax rate by April 1st with no further specification. Subsequently, House Amendment O was introduced which specified a mill rate of 13 mills for fiscal year 1977. This provision, one of many within House Amendment O, is essentially the same as the first portion of the third sentence of sub-§ 2. The Statement of Fact on House Amendment O indicated that the purpose of this particular portion of the amendment was to: "establish the mill rate of the uniform property tax at 13 mills." Thus, an intent to establish the rate was stated. House Amendment O was then amended by Senate Amendment H to add the last portion of the third sentence of sub-§ 2 "and 12.5 mills thereafter." The stated purpose of this amendment was "to clarify the applicability of the uniform property tax rate." Thus, the initial legislation only included the general language calling for setting of a uniform property tax rate by April 1st. However, amendments to that legislation specified the property tax rate both for fiscal year 1976 and for subsequent fiscal years. Further, the Statements of Fact with the legislation conveyed a clear intent to specify the uniform property tax rate. Where legislative intent can be identified, it should prevail, Finks v. Maine State Highway Commission, 328 A.2d 791 (Me., 1974), Collins v. State, 161 Me. 445 (1965).

Even in the absence of the express legislative intent available here, other doctrines of statutory construction would require that the 12.5 mill rate specified in the law prevail. Amendments are viewed as indicating intent to change laws or proposed legislation and thus amendments prevail in interpretation over provisions of the basic legislation amended, cf. Millett v. Hayes & Co., 132 Me. 12 (1933) In Re Bangor and Aroostook R. Co., 159 Me. 86 (1963). Additionally, as a general matter, specific terms in legislation prevail over generalities. Thus the specific 12.5 would prevail over the general direction to set the mill rate in this case, cf. State v. Ferris, 284 A.2d 288 (Me., 1971).

Thus, the 12.5 mill rate will prevail in fiscal year 1978 and subsequent fiscal years unless it is amended. No legislative enactment is required to make the 12.5 mill rate go into effect.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

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