

MAINE STATE LEGISLATURE

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Un. Form Property Tax. Proper Valuation
ME. CONST. Art 9 Sec. 8
36 MRSA 451(2)
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December 22, 1976

Honorable Edward H. Mackel
Box 279
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Dear Representative Mackel:

This responds to your question of whether the 108th Legislature can enact a law which would base the assessments for the 1977 uniform property tax upon the 1975 state valuation?

ANSWER:

The 108th Legislature may be prohibited by Maine Constitution, Article IX, Section 8 from enacting a law which would base the assessments for the 1977 uniform property tax upon the 1975 state valuation.

REASONING:

The use of the 1975 state valuation as the basis of the assessments for the 1977 uniform property tax raises serious constitutional problems. Maine Constitution, Article IX, Section 8 provides that "[a]ll taxes upon real and personal estate . . . shall be apportioned and assessed equally according to the just value thereof. . . ." Although the 1975 state valuation resulted from a process of equalizing municipal valuations, that valuation may presently be outdated. If municipal valuations (as reflected in the 1977 state valuation now being prepared by the Bureau of Taxation) have risen or fallen by varying proportions, then the continued use of the 1975 state valuation would result in unequalized assessments.

Whether use of the 1975 state valuation as the basis for the 1977 uniform property tax would actually violate Article IX, Section 8 cannot be determined at this time for two reasons. First, the proportional change in municipal valuations between the 1975 and the 1977 state valuations cannot be determined until the 1977 state valuation is finalized. Second, the Supreme Judicial Court has not

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decided what degree of inequality between municipal valuations would constitute a violation of Article IX, Section 8. Nevertheless, the proposed legislation discussed in this opinion carries a definite risk of containing a constitutional infirmity.

Note: Impact of Maine Constitution, Article IV, Part 3, Section 18

If the proposed legislation discussed in this opinion is submitted to the Regular Session of the 108th Legislature notwithstanding its constitutional problems, then the conclusions and reasoning of the prior opinions of this office to Representative Bonnie Post would apply.

A direct initiative petition containing a bill entitled "AN ACT to Repeal the State Property Tax" is presently being circulated under the provisions of Article IV, Part 3, Section 18 of the Maine Constitution. Section 3 of this bill would repeal 36 M.R.S.A. § 451(2) as enacted by P. L. 1975, C. 660, § 5. Section 451(2) establishes the Uniform Property Tax rate at "13 mills for the period beginning July 1, 1975, and ending June 30, 1977, and 12.5 mills thereafter." If the bill contained in the petition is presented to the Regular Session of the 108th Legislature as a result of this initiative, then the proposed legislation discussed in this opinion will have to conform with the provisions of Article IV, Part 3, Section 18.


Legislation which would base the assessments for the 1977 uniform property tax upon the 1975 state valuation would constitute an amended form of the bill contained in the initiative petition. Section 451(2) provides that the mill rate of the uniform property tax "shall be applied to the state valuation of each municipality and property in the unorganized territory." As § 451(3) indicates (by reference to 36 M.R.S.A. § 305(1) (Supp. 1976)) the state valuation referred to in § 451(2) is the valuation filed by the State Tax Assessor with the Secretary of State by February of each year in which the Legislature meets in regular session. In the absence of the proposed legislation discussed in this opinion, the mill rate of the 1977 uniform property tax would be applied to the 1977 state valuation. The proposed legislation, by requiring the use of the 1975 state valuation, would effectively amend § 451(2).

Since the proposed legislation discussed in this opinion constitutes an amended form of the initiative measure, the conclusion reached in our opinion of October 22, 1976, applies here. Therefore, if the bill contained in the petition is presented to the Regular Session of the 108th Legislature as the result of this initiative, the Legislature in that session would not be prohibited by the

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Constitution from enacting the proposed legislation discussed in this opinion for a period beginning July 1, 1977, and terminating June 30, 1978, so long as the bill contained in the initiative petition is not submitted to the electorate so that it could be effective prior to July 1, 1977. The reasoning for this conclusion can be found in our opinion of October 22, 1976.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

JEB:mfe