

MAINE STATE LEGISLATURE

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Legislature Taxing Powers
Me Const Art. 9 sec. 9
" " Art. 4 Pt. 3 sec. 18

STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

December 22, 1976

Honorable Richard J. Carey
27 Sterling Street
Waterville, Maine 04901

Dear Representative Carey:

This responds to your letter in which you asked if an initiated measure repealing the uniform property tax would violate Me. Const. Art. IX, § 9.

ANSWER:

An initiated measure repealing the uniform property tax would not violate Me. Const. Art. IX, § 9.

REASONING:

Me. Const. Art. IX, § 9 states that "[t]he Legislature shall never, in any manner, suspend or surrender the power of taxation." Art. IX, § 9 clearly prohibits the Legislature from surrendering its power to tax; the section, however, does not direct itself to actions of the people. Art. IX, § 9, therefore, has no application to the constitutional provisions for initiated legislation. Me. Const. Art. IV, Pt. 3, § 18.

In your letter of November 5, 1976, requesting an opinion on this subject, you commented "that if this [petition] drive is successful and future drives to abolish sales and income taxes were successful, the legislature would be effectively stripped of the power to tax." It should be noted that Art. IV, Pt. 3, § 18 does not suspend the effect of a statute which is the object of a successful petition drive. Thus, the uniform property tax will remain in effect until such a time as the electorate approves the initiated bill -- i.e., until the people repeal the tax, if that should occur. The only restriction which § 18 places upon the Legislature is that "a bill enacted which is a substitute for [or an amended form of] the initiated measure must go to the electors with the initiated measure, and does not become a law

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until they approve it under the provisions of Sec. 18." Farris ex rel Dorsky v. Goss, 143 Me. 227, 232 (1948). The constitutional provision on initiatives, therefore, does not strip the Legislature of its power to tax. Sec. 18 only prohibits the Legislature from amending tax laws which are the subject of initiative measures designed to accomplish their repeal.

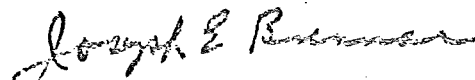
The constitutional provision on initiative procedure does not limit the subject matter of initiated measures. Art. IV, Pt. 3, § 18 specifically states that initiated bills may "repeal emergency legislation." Moreover, the Supreme Judicial Court in Morris v. Goss, 147 Me. 89, 108 (1951), has commented that:

"tax measures like other measures enacted by the Legislature as emergency legislation may be ultimately repealed by the people either by the exercise of their elective franchise and the election of a Legislature responsive to their will, or by invoking the provisions for initiated legislation contained in the Constitution." [emphasis added]

The initiative procedure established in Me. Const. Art. IV, Pt. 3, § 18, therefore, establishes a mechanism whereby the electorate may repeal tax measures.

I hope this information is helpful.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

JEB/ec