

# MAINE STATE LEGISLATURE

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Landlord-Tenant! Legal Restrictions on Relations  
Contracts, Statutory Regulation  
Property Rights, Statutes, Regulation  
see Const. Art 1, § 11

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March 2, 1977

Representative James Henderson  
State of Maine  
House of Representatives  
Augusta, Maine 04333

Dear Jim:

My office has reviewed the Uniform Residential Landlord and Tenant Act as set forth in LD 2258 of the 107th Legislature as to its over-all constitutionality and the constitutionality of the specific sections relating to the contractual obligation between the landlord and tenant. We have found the act constitutional in both respects.

Property rights, the right of a landlord to deal with his property as he sees fit, are a creation of the state and the legislature may change and redefine those rights as it sees fit. Harrison v. City of Philadelphia, 217 Fed. 107 (E.D. Pa. 1914). Property rights are not vested rights as protected by the Maine Constitution, Article 1, § 11. The state may, therefore, restrict the use of private property under its sovereign authority to protect the health, safety and welfare of its citizens. Woods v. Perkins, 119 Me. 257, 110 A. 633 (1920), Troy Hills Village v. Fischler, 22. N.J. Sup. 573 301 A.2d 177, (1971). Environmental laws, subdivision and zoning laws are examples of statutes enacted under the state's police power, which restrict the use of private property.

Sections 9008, 9011, and 9019 of LD 2258 which could operate to alter the obligation under a contract entered into between a landlord and tenant are constitutional for the following reasons:

Representative James Henderson

March 2, 1977

Page 2

1. There is no impairment of existing contractual obligations as prohibited by the Maine Constitution, Article 1, § 11 because the statute operates prospectively only by virtue of its savings clause, section 9021. Therefore, lease or rental contracts in existence at the time the act becomes law would not be affected. Only those entered into, including renewals, after the date of enactment would be affected.

2. The right to enter into contracts is a right subservient to the state's police power. Contracts made in the state are subject to the valid exercise of the state's police power. Elsemore v. Inhabitants of the Town of Hancock, 137 Me. 243, 18A 2d 692 (1941).

"The rule is general, that every contract touching matters within the police power must be held to have been entered into with the distinct understanding that the continuing supremacy of the state, if exerted for the common good and welfare can modify the contract when and as the benefit of that interest properly may require."

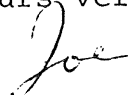
In Re. Guilford Water Co.

118 Me. 367, at 372,

108 A. 446 at 449.

3. The regulation of rental property has been held a proper exercise of police power to prevent over-reaching by landlords Bauman v. Islay Investments, 30 Cal. App. 3rd 752, particularly in situations where housing shortages exist, Marine v. Ireland, 56 N.J. 130, 265 A2d 526 (1970).

Yours very truly,

  
JOSEPH E. BRENNAN  
Attorney General

JEB/sjn