

# MAINE STATE LEGISLATURE

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Mr. Court Act 9 rec. 9

March 4, 1977

Honorable Donald H. Burns  
House of Representatives  
State House  
Augusta, Maine

Dear Representative Burns:

This letter responds to your recent oral request for an opinion of this office on the constitutionality of legislation which you propose. That legislation is titled "An Act to Give Counties Power to Assess and Collect their Own Taxes," and your specific question was whether legislation of this type creates any constitutional problem in view of Art. IX, Section 9 of the Constitution of Maine. The constitutional provision forbids the Legislature to suspend or surrender the power of taxation.

In researching your question we found a previous opinion of this office dated February 26, 1976, which addresses the same question. We are enclosing a copy of the request for that opinion and the opinion itself for your information. The opinion concludes that delegation of taxing power by the Legislature to the counties would not violate Art. IX, Section 9 so long as the Legislative direction is sufficiently specific to avoid questions of inadequate delegation of the taxing authority. The legislation which was submitted with the request for the opinion was virtually identical in concept and in many provisions to the legislation which you presently propose. Therefore, we believe that our earlier opinion adequately answers your question.

Please continue to call on us whenever we may be of assistance.

Sincerely,

S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:mfe

Enclosure

February 25, 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.

Sen. Jackson and Rep. Snow  
February 23, 1975  
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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

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STATE OF MAINE

ONE HUNDRED AND SEVENTH LEGISLATURE

JOINT SELECT COMMITTEE ON COUNTY GOVERNMENT

February 10, 1976

The Honorable Joseph E. Brennan  
The Attorney General  
State House  
Augusta, Maine 04333

Dear Sir:

The Joint Select Committee is considering legislation that would transfer the power to approve county budgets from the Legislature to county finance boards. Such legislation would include provisions stating specific activities for which the county could raise and expend county tax monies, and would also create a county board elected by the county residents which would have the final authority to approve the county budget. I am enclosing a rough draft of the legislation for your information.

The committee requires an answer to one basic question relating to this proposal:

"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?"

Thank you for your consideration.

Respectfully,

A handwritten signature in cursive script, appearing to read "Philip C. Jackson".

Philip C. Jackson, Senate Co-Chairman

A handwritten signature in cursive script, appearing to read "Roger V. Snow, Jr.".

Roger V. Snow, Jr., House Co-Chairman 158