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Taxation (Uniform Property Tax) Mill Rate Deadline  
Initiative Petitions Effect on Legislation  
Legislation Initiative Petitions  
Me. Const. Art 4 Pt 3rd § 18  
35 MRSA 451 (2)

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## STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

March 24, 1977

Honorable John L. Martin  
Speaker of the House  
State House  
Augusta, Maine

Dear Speaker Martin:

This responds to your question relating to legislation amending the April 1st deadline for establishing the mill rate of the Uniform Property Tax.

### QUESTION:

In light of the pending initiative to repeal the Uniform Property Tax, can the 1st Session of the 108th Legislature extend the April 1st deadline for establishing the mill rate of the Uniform Property Tax?

### ANSWER:

The 1st Session of the 108th Legislature can extend the April 1st deadline for establishing the mill rate of the Uniform Property Tax by adopting emergency legislation without violating the constitutional provision concerning initiative legislation. It should be noted that presently school budgets must be adopted prior to May 1st (P.L. 1977, c. 10 enacting 20 M.R.S.A. § 3754).

### REASONING:

#### Background

Me. Const. Art. IV, Part Third, Section 18, which establishes the procedure for direct initiative of legislation, provides that unless the Legislature enacts an initiated measure without changes, the measure "shall be submitted to the electors together with any amended form, substitute, or recommendation of the Legislature, and in such a manner that the people can choose between the competing measures or reject both." The Supreme Judicial Court, in Farris ex rel Dorsky v. Goss, 143 Me. 227 (1948), in interpreting the above-quoted portion of § 18, stated that:

". . . Sec. 18 places no curb on the enactment of legislation; but a bill enacted which is a substitute for the initiated measure must go to the electors with the initiated measure, and does not become law until they approve it under the provisions of Sec. 18." 143 Me. 227, at 232.

Thus, according to Dorsky, a competing bill (amended form, substitute or recommendation) does not take effect until it is approved by the electorate. However, in a recent Opinion of the Justices, dated March 8, 1977, the Supreme Judicial Court apparently significantly qualified its decision in Dorsky, without, however, mentioning that earlier decision.

#### Qualification of Dorsky

The issue before the court in its March 8, 1977 Opinion was whether certain legislative documents containing emergency preambles could alter the mill rate of the Uniform Property Tax for the year beginning July 1, 1977, and terminating June 30, 1978. Although the court did not address the issue of whether these bills would be competing measures, a prior Opinion of the Attorney General, dated September 21, 1976, dealing with similar legislative documents, supports the conclusion that these documents would constitute amended forms of the bill contained in the initiative petition. A similar conclusion should follow as to a bill to extend the April 1st deadline. Thus, applying Dorsky, legislation extending the April 1st deadline could not become law until submitted to and approved by the electorate.

The Supreme Judicial Court, however, in its March 8, 1977, Opinion, appears to have held, without citing Dorsky, that Dorsky does not apply to emergency legislation. Thus, according to this recent decision, an otherwise competing bill, if enacted as emergency legislation, becomes effective when enacted. Based upon the above interpretation of the court's March 8, 1977, Opinion, emergency legislation extending the April 1st deadline can be effective when enacted without violating Me. Const. Art. IV, Part 3, § 18.

#### An Alternative Rationale

The justification discussed above for the answer to the question posed in this opinion is premised on the assumption that the legislative documents at issue in the March 8, 1977, Opinion were competing measures with the bill contained in the

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initiative petition. However, if the court assumed that those legislative documents did not constitute competing legislation, then the court's apparent qualification of Dorsky might not apply to legislation, such as a bill to extend the April 1st deadline, which did constitute competing legislation. An alternative justification for enactment of immediately effective emergency legislation, therefore, is necessary.

In an opinion dated October 22, 1976, this office concluded that the first session of the 108th Legislature would "not be prohibited by the Constitution from [enacting a competing bill which would be effective] 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 March 8, 1977 Opinion of the Justices did not undermine the above-quoted conclusion. Rather, the court confirmed our contention that the repeal of the Uniform Property Tax would operate prospectively. Therefore, an extension of the April 1st deadline for the year beginning July 1, 1977, and terminating June 30, 1978, would appear to be constitutional.

#### Timing of Legislation

35 M.R.S.A. § 451(2) (Supp. 1976) states that

"The Legislature shall annually, prior to April 1st, enact legislation establishing the uniform property tax rate. The uniform property tax rate shall be 13 mills for the period beginning July 1, 1976 and ending June 30, 1977, and 12.5 mills thereafter."

As was concluded in a prior opinion of the Attorney General dated December 2, 1976, the 12.5 mill rate prevails over the April 1st requirement. The March 8, 1977, Opinion of the Justices, does not alter this conclusion. Thus, unless the Legislature sets a new rate by April 1, 1977, the rate will be 12.5 mills. If the Legislature amends the April 1st deadline at some time after April 1, 1977, the Legislature must also amend the phrase "12.5 mills thereafter." In other words, if the mill rate is already established at 12.5 mills, the Legislature must not only extend the April 1st deadline, but also must amend the rate.

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Form of Legislation

The April 1st deadline is contained both in 36 M.R.S.A. § 451(2) (Supp. 1976) and 20 M.R.S.A. § 3747(8) (Supp. 1976). Any legislation amending the April 1st deadline should amend both these provisions.

If we can be of any further assistance to you, please do not hesitate to call on us.

Sincerely,

*Joseph E. Brennan*  
JOSEPH E. BRENNAN  
Attorney General

JEB/ec

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