

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 22, 1977

Honorable Robert A. MacEachern
House of Representatives
State House
Augusta, Maine

Dear Representative MacEachern:

We are responding to your request of April 7, 1977, for an opinion of this office concerning the constitutionality of certain sections of L.D. 1482. The title of this legislation is "An Act Authorizing Municipalities to Create Development Districts" and is designed to encourage new development in previously developed areas of municipalities. The bill will allow municipalities to designate specific districts in which such development is to occur pursuant to an established plan or program. Among the methods which would be used for financing such program are procedures whereby the municipality could "recapture" that portion of property taxes upon property within the district which have resulted from any increased valuation of the property due to the development, and development and maintenance assessments upon property benefitted by the improvements.

You have asked four questions with regard to L.D. 1482. Two questions concern the constitutionality of the proposed provisions which would allow a municipality to divert part of state and county property taxes into a sinking fund for the benefit of financing developments within the district. The other two questions concern the constitutionality of the development and maintenance assessments upon property within the district itself. It is our opinion that each of these provisions presents no constitutional infirmities for the reasons stated below.

Honorable Robert A. MacEachern
Page 2
April 22, 1977

The primary provisions of the Maine Constitution relating to taxation provide that no tax shall be imposed without consent of the people or the Legislature (Art. I, Sec. 22), that all taxes on real and personal property ". . . shall be apportioned and assessed equally, according to the just value of [the property] . . ." (Art. IX, Sec. 8), and that "the Legislature shall never, in any manner, suspend or surrender the power of taxation." (Art. IX, Sec. 9).

The proposed paragraphs A and B of 30 M.R.S.A. § 4864, sub-§ 3, taken together, would allow a municipality which has established a development district to retain a definable portion of State and county property taxes which are attributable to all or part of the increase in valuation in the development district, and apply these retained taxes to the "development sinking fund." The State and county would allow the municipality a credit for the amount of such tax revenues which are retained. In the case of the State, these retained funds would come primarily from the uniform property tax. 36 M.R.S.A. § 451, sub-§ 2. Since the property in the development district would be valued and the taxes assessed thereon in the same manner and at the same rate as all other real property which is taxed, there would be no problem of unequal assessment or assessment at less than the just value of the property. The taxes would still be collected with the consent of the Legislature and the Legislature would not be suspending or surrendering the power of taxation. Furthermore, although this procedure would result in some inequality in distribution of tax monies among and within the municipalities, so long as there is equality in the assessment of the taxes and the taxes are being used for the purpose of the public welfare, there is no constitutional prohibition of such distribution. Sawyer v. Gilmore, 109 Me. 169, 178 (1912).

The second set of questions concerns proposed 30 M.R.S.A. § 4865, sub-§§ 1 and 2, which would allow a municipality to estimate and assess a development assessment upon property benefitted by program improvements and a maintenance assessment upon property within the development district. In other words, for these limited purposes, the property owners within the district would pay an assessment which would not be paid by property owners outside of the district. This would not cause a constitutional problem because ". . . taxation for local purposes by assessments upon property benefitted, and in proportion to the benefits conferred upon it, are valid." Inhabitants of Sandy River Plantation v. Lewis and Maxcey, 109 Me. 472, 476 (1912).

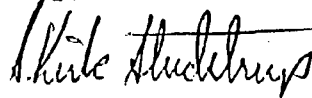
337

Honorable Robert A. MacEachern
Page 3
April 22, 1977

These assessments would be similar to assessments which are commonly made upon property owners on the basis of the benefit received for such improvements as construction of streets and sewers adjacent to their property. Such assessments are constitutional, provided they are justly and equitably administered.

Please continue to call upon us whenever you feel we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe