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*Me. Const. Art. 9, sec. 8  
Taxation: Uniformity of local taxes*

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June 13, 1977

The Honorable Donald F. Collins  
Senate Chairman  
Committee on State Government  
One Hundred and Eighth Legislature  
State House  
Augusta, Maine 04333

The Honorable Peter J. Curran  
House Chairman  
Committee on State Government  
One Hundred and Eighth Legislature  
State House  
Augusta, Maine 04333

Dear Sirs:

This responds to your opinion request concerning the local and State government tax.

QUESTION 1:

Does the fact that assessors in some municipalities fail to commit for collection the full amount that could be raised at the local and State government tax rate result in a violation of Article IX, Section 8 of the Constitution of Maine?

ANSWER 1:

Municipal assessors who do not commit the full amount that could be raised at the local and State government tax rate do not comply with the provisions of 36 MRSA § 451-1 (Supp. 1976) and may violate Me. Const. Art. IX, § 8 and the equal protection clauses of the Maine and United States constitutions. Me. Const. Art. I, § 6-A; U.S. Const. 14th am.

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REASONING 1:

Question 1 refers only to a possible violation of Me. Const. Art. IX, § 8. However, the failure of assessors to commit the full tax required by the local and State government tax, 36 MRSA § 451-1 (Supp. 1976), also raises possible conflicts both with § 451-1 and with the equal protection clauses of the State and federal constitutions. Me. Const. Art. I, § 6-A; U.S. Const. 14th am. In answering Question 1, we will discuss whether the failure of assessors to commit at the full rate violates all three of the provisions mentioned above.

A. 36 MRSA § 451-1

The local and State government tax, 36 MRSA § 451-1 (Supp. 1976), is a State imposed property tax assessed at a specified rate upon all taxable property in the State. Each municipality collects the tax and expends the revenues "for necessary expenses of local government as determined or appropriated by the legislative body of such municipality . . . ." The State collects the tax in the unorganized territory.<sup>1/</sup>

1. Failure to Commit

Municipal assessors who do not commit<sup>2/</sup> the full amount that could be raised at the local and State government tax rate do not comply with 36 MRSA § 451-1. Although § 451-1 does not specify that assessors shall commit the assessments of the local and State government tax, provisions of the section imply that commitment is required. Section 451-1 requires that the receipts from the local and State government tax be paid over to the municipal treasurer. However, taxes cannot be collected or paid unless the assessor commits the taxes to the collector. 36 MRSA § 709 and § 709-A (Supp. 1976). Commitment is a necessary precondition to the collection and payment of taxes, and since the local and State government tax must be collected and paid, an assessor who fails to commit the full amount<sup>3/</sup> that could be raised by the tax has violated § 451-1.<sup>3/</sup>

- <sup>1/</sup> The uniform property tax, 36 MRSA § 451-2 (Supp. 1976), is a separate state imposed tax, the revenues from which are expended for education.
- <sup>2/</sup> Commitment constitutes the transfer by the assessor to the collector of the perfect list of assessments.
- <sup>3/</sup> It should be noted that there are permissible credits which can be applied to the assessment of taxes. See 30 MRSA § 5052 (1965); 36 MRSA § 714 (Supp. 1973).

2. Failure to Assess

Many assessors who fail to commit at the rate specified in the local and State government tax may also violate their statutory obligation to assess that tax. In assessing taxes, assessors compute the amount of taxes due from each taxpayer by multiplying the valuation of the taxpayer's property by the tax rate. The assessors then make a "perfect list" of their assessments and commit this list to the tax collector. 36 MRSA § 709 and § 709-A (Supp. 1976). The commitment of taxes is thus based upon the assessments prepared by the assessor.

Section 451-1 requires the assessor to assess the local and State government tax at the specified rate. If an assessor's failure to commit the full amount of the local and State government tax results from reducing the required tax rate used in computing assessments, then the assessor will not have met his statutory requirement to assess the tax.

B. Me. Const. Art. IX, § 8.

Me. Const. Art. IX, § 8 provides that all property taxes must be assessed and apportioned equally. The Supreme Judicial Court has construed Art. IX, § 8 so as to require state property taxes to be assessed at the same rate in all municipalities. See Opinion of the Justices, 339 A.2d 492, 510 (Me: 1975). Moreover, the requirement of Art. IX, § 8 is not affected by the fact that municipalities both collect and retain the revenue from the local and State government tax. The local and State government tax is a state tax and thus must be assessed equally throughout the State.

In Part A(2) of this opinion, we stressed that the commitment of taxes for collection is based upon the assessment of taxes. Thus, many assessors who fail to commit a particular tax at the required tax rate, will have also failed to assess the tax at the full rate. Although, one could argue that any commitment at a rate less than is required by statute violates the provisions of Art. IX, § 8, we do not reach this broader question. Rather, we conclude that assessors who assess the local and State government tax at a rate lower than that set in § 451-1 violate the provisions of Art. IX, § 8. Furthermore, assessors violate the same provision when they commit taxes based upon these improper assessments.

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C. Me. Const. Art. I, § 6-A and U.S. Const., 14th am.

The equal protection clauses of the Maine and federal constitutions provide that "[n]o person shall . . . be denied equal protection of the laws . . . ." When assessors fail to commit the full amount that could be raised by the local and State government tax, they may violate the equal protection clause. The local and State government tax is assessed against all property taxpayers throughout the State. Although municipalities collect and retain the revenues from the local and State government tax, that tax is imposed upon taxpayers throughout the State and not upon municipalities.<sup>4/</sup> See Acton v. McGary, 356 A.2d 700, 706 (Me. 1976). If some municipal assessors fail to commit the full amount that could be raised at the tax rate imposed by § 451-1, then taxpayers in those municipalities will pay a smaller local and State government tax than taxpayers in municipalities (or the unorganized territory) which commit at the full rate prescribed by § 451-1. Such a result presents a possible violation of the equal protection clause because the State tax will be levied unequally upon taxpayers in different jurisdictions. A determination of whether the equal protection clause is actually violated would depend upon the particular facts involved in any situation, such as the existence of a plaintiff who has suffered a legally recognized injury.

QUESTION 2:

If the Constitution is violated, would the following amendment to the constitution and referendum question provide a possible remedy?

Constitutional Amendment

Constitution, Art. IX, § 8, a third paragraph is added to read:

The Legislature may levy, in addition to any State property tax, a tax upon the real and personal property in any unorganized territory of the State for any purpose that municipalities may raise money. The revenues of this separate levy shall be used only to provide services to the unorganized territory.

4/ The tax imposed pursuant to § 451-1, however, should be distinguished from municipal taxes. A municipality may raise a tax, in addition to its State tax obligations, which is assessed only against taxpayers within the municipality.

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ANSWER 2:

The proposed constitutional amendment provides a possible remedy to the statutory and constitutional problems discussed in response to Question 1.

REASONING 2:

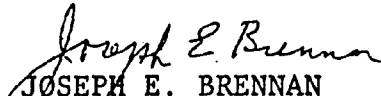
Under existing constitutional law, the Legislature cannot enact a separate property tax upon the unorganized territory. Opinion of the Justices, 146 Me. 239 (1951). In order to fund services in the unorganized territory, the Legislature has enacted the local and State government tax, which is assessed upon all property in the State. The constitutional and statutory problems discussed in Reasoning 1 arise because the local and State government tax is set at rate which is necessary to fund services in the unorganized territory, but which exceeds the revenue requirements of many municipalities. Thus, many municipalities neither assess nor commit taxes at the full rate required by the local and State government tax. The proposed constitutional amendment, if enacted, will authorize the Legislature to enact a property tax only on property in the unorganized territory, thus eliminating the need for the local and State government tax. If the Legislature repeals the local and State government tax and enacts a separate tax on the unorganized territory, municipal assessors will not be required to raise more revenue than is necessary to fund municipal services. Moreover, with the repeal of the local and State government tax, the constitutional and statutory problems discussed in Reasoning 1 will be eliminated.

NOTE:

Suggested Change in Language of Proposed Constitutional Amendment.

The word "any" in the phrase "property in any unorganized territory." should be replaced with the word "the". The present language implies that more than one unorganized territory exists. However, the State has only one unorganized territory. Moreover, this suggested change clearly prohibits the Legislature from enacting different taxes upon different portions of the unorganized territory.

Very truly yours,

  
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