

MAINE STATE LEGISLATURE

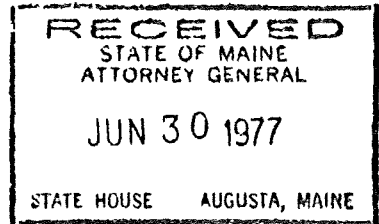
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Me Const Art 9 sec 8
Tax Exemptions

LD 1554



June 17, 1977

The Honorable Donald Carter
House of Representatives
Legislative Post Office
Augusta, ME 04333

Re: Constitutionality of L.D. 1554

Dear Representative Carter:

You have asked whether L.D. 1554, AN ACT to Exempt Property under Construction from Real Property Taxation, is unconstitutional on the ground that ". . . our State Constitution provides that property has to be taxed on the basis of its real value, its highest and best use, and the only exception to that in the Constitution are farm property, open space property and forest land", as asserted in senate debate on June 2, 1977. Legislative Record-Senate, p 1419. The reference is apparently to Article IX, Section 8 of the Maine Constitution, which provides, in pertinent part, that:

All taxes upon real and personal estate
. . . shall be apportioned and assessed equally,
according to the just value thereof . . .

The Supreme Judicial Court ruled on this question as early as 1873:

The legislature may determine the amount of taxation and select the objects. They may exempt by general and uniform laws certain descriptions of property from taxation, and lay the burden of supporting government elsewhere. Brewer Brick Co. v. Brewer, 62 Me. 62, 73-74.

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In 1947, this result was restated and affirmed as follows:

. . . As to taxes upon real and personal estate in general it has long been accepted that [Article IX, section 8] of the Constitution does not require the Legislature to impose taxes upon all property within the State but only that any tax which shall be lawfully imposed upon any kind or class of real or personal property shall be apportioned and assessed upon all such property equally. Opinion of the Justices, 141 Me. 442, 446-7.

Consequently, the legislature may exempt from property taxation the class of industrial and commercial property under construction. In like manner, the legislature has exempted mines of gold, silver or baser metals during the first ten years of their operation. 36 MRSA § 656 sub-§ 1-B. The principles quoted above from senate debate then apply only to real and tangible personal property which is not exempt from property taxation. Therefore, we conclude that Article IX, section 8 of the Maine Constitution does not preclude the exemption of property under construction which is contemplated by L.D. 1554.

Sincerely,

Clifford B. Olson
Assistant Attorney General

CBO:gr

cc: Donald Alexander
Deputy Attorney General