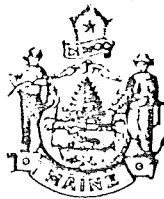


MAINE STATE LEGISLATURE

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

June 28, 1977

The Honorable Richard A. Spencer
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Spencer:

This responds to your request for an opinion concerning whether the proposed amendment to Art. IX, § 8 of the Maine Constitution, quoted below, violates the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. Pursuant to the proposed amendment, Maine Constitution, Art. IX § 8 is amended by adding at the end the following new paragraph:

The Legislature also may impose taxes only upon the real and personal property in the unorganized territory.

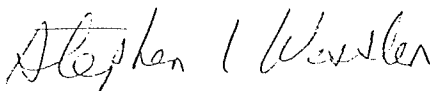
The answer to your question is that the proposed amendment to Me. Const. Art. IX, § 8 does not by itself violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

The Legislature may implement the proposed amendment in a number of ways, many of which would not violate the equal protection clause. For example, legislation establishing a tax upon the property in the unorganized territory for the purpose of funding services provided in the unorganized territory would not run afoul of the Fourteenth Amendment. Rather, such a tax, which would be similar in concept to municipal property taxes, would clearly meet a standard of minimum rationality. The burden imposed upon taxpayers by the hypothetical tax described above would be commensurate with the benefits (or services) gained by the taxpayers.

Although the Legislature could enact legislation pursuant to the proposed amendment which might violate the equal protection clause, this possibility does not invalidate the

proposed amendment. Rather, any legislation enacted pursuant to the proposed amendment must be evaluated on its own merits. The constitutional amendment which authorizes such legislation is not facially invalid. It should be noted that the United States Supreme Court has rarely invalidated laws (or State constitutional provisions) which are capable of constitutional application. Although "the Court has recognized some limited exceptions to [this] principle", it has done so "only because of the most 'weighty countervailing policies,'" such as those invoked by the First Amendment. Broaderick v. Oklahoma, 413 U.S. 601, 611 (1973).

Sincerely,



Stephen L. Wessler
Assistant Attorney General

SLW:spa