

# MAINE STATE LEGISLATURE

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June 30, 1977

Honorable Donald Carter  
House of Representatives  
State House  
Augusta, Maine 04330

Dear Representative Carter:

This responds to your request for advice as to whether certain of the provisions of L.D. 1553 relating to binding arbitration for public employees are violative of Article IX, Section 9, of the Maine Constitution. Section 9 provides:

"The Legislature shall never, in any manner, suspend or surrender the power of taxation."

Section 4 of L.D. 1553 would enact 26 M.R.S.A. § 979-P to provide binding arbitration in the case of certain state services. This section would include a requirement that an award of arbitrators be final and binding upon the parties, subject only to challenge as provided in 26 M.R.S.A. § 979-M.

The award of arbitrators could include recommendations relating to shifts in wages. As these shifts in wages could entail assessment of costs against the State, you question whether this possible assessment creates a constitutional problem.

In our view, no constitutional problem is created. 26 M.R.S.A. § 979-D specifies those matters which are subject to collective bargaining for the purposes of Chapter 9-B of the Labor Relations Act, the chapter within which the amendments to L.D. 1553 which are at issue would be included. Section 979-D-1-E-3 specifies that any cost items which result from collective bargaining activity shall be subject to presentation in the budget for legislative approval. If the Legislature rejects any cost items, all cost items submitted to it as a result of the collective bargaining activities shall be resubmitted to the parties for further bargaining.

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This limitation on general collective bargaining authority would also limit the capacity of the arbitrators' award to become final and subject the cost items of any such award to presentation in the budget and legislative review and approval. As those items would be subject to presentation in the budget and legislative review and approval, there would be no improper delegation with the Legislature of taxing authority under Article IX, Section 9.

We believe that this conclusion reasonably follows from a reading of Chapter 9-B which, if L.D. 1553 were enacted, would include both § 979-D and the new § 979-P. Further, such a conclusion is compelled by the doctrine that, where varying interpretations of a statute are available, and one interpretation of the statute may raise questions of constitutionality, the interpretation which avoids the constitutional problems should be adopted, Portland Pipeline v. Environmental Improvement Commission, 307 A.2d 1 (Me., 1973). Here, an interpretation of the statute which looked at § 979-P alone and did not assume the subsequent approval of the Legislature was necessary could potentially raise a problem with Article IX, Section 9. That problem is avoided by the reference back to the provisions of § 979-D.

I hope this information is helpful.

Sincerely,



DONALD G. ALEXANDER  
Deputy Attorney General

DGA:jg  
cc: Representative Edith S. Beaulieu