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Initiative Legislation; Competing Legislation
Me Const Art IV Pt 3 sec. 18
Uniform Property Tax Initiative

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July 8, 1977

The Honorable Markham L. Gartley
Secretary of State
State House
Augusta, Maine 04333

Dear Mr. Gartley:

The following responds to your opinion request concerning the initiated bill to repeal the uniform property tax.

BACKGROUND:

Me. Const. Art. IV, Part 3, Section 18 establishes the procedure for "direct initiative of legislation." Section 18 provides that unless the Legislature enacts the initiated measure without change, the measure shall "be submitted to the electors together with any amended form, substitute or recommendation of the Legislature, and in such a manner that the people can choose between the competing measures or reject both."

An initiated bill to repeal the uniform property tax has been presented to the current session of the Legislature. See Opinion of the Justices, 370 A.2d 654 (Me. 1977). Section 2 of the bill seeks repeal of 20 MRSA § 3747, 1st sentence (through repeal of subsection 8). Section 3 of the bill seeks repeal of 36 MRSA § 451-2 (Supp. 1976). Both § 3747 and § 451-2 require the Legislature to set the mill rate of the uniform property tax by April 1st of each year.

P.L. 1977, c. 48 amends both 20 MRSA § 3747 and 36 MRSA § 451-2 by changing the April 1st deadline for establishing the mill rate of the uniform property tax to April 14th.

QUESTION:

Is P.L. 1977, c. 48 a competing measure with the initiated bill to repeal the uniform property tax, such that c. 48 will

have to be submitted to the electorate at the referendum on the initiated bill?

ANSWER:

P.L. 1977, c. 48 together with P.L. 1977, c. 109 is a competing measure with the initiated bill to repeal the uniform property tax and must be submitted to the electorate at the referendum on the initiated bill.

REASONING:

C. 48 is an Amended Form

In an opinion dated September 21, 1976, this office concluded that a change in the mill rate of the uniform property tax constitutes an amended form of the initiated bill to repeal the uniform property tax. See also Opinion of the Attorney General, May 20, 1977. In reaching this conclusion, this office reasoned that:

> "Although a change in the mill rates does not alter any language in the initiative measure, it clearly alters the effect of that measure. If the mill rates are changed prior to the referendum on the initiated measure, the passage of the initiated measure will repeal the amended version of the uniform property tax and not the version existing at the time the initiative petition was filed. Thus in practical terms a change in the mill rates amends the initiative measure."

The reasoning of our September 21, 1976 opinion applies to a change in the date on which the mill rate is established as well as to a change in the mill rate itself. Moreover, if the change accomplished by c. 48 is not construed as a competing measure, the initiative process may be frustrated. The date by which the Legislature must establish the mill rate bears a critical relation to the level of funding for education. Pursuant to the law as it existed prior to the enactment of c. 48, the Legislature was required to set the mill rate of the uniform property tax, and thus the level of funding for education, by April 1st of every year. As a practical matter, this meant that the education budget was established before the State appropriated moneys for all other programs. Thus, when the education budget was established, that budget was not in direct competition with all other state programs. However, when the Legislature changes the date on which the mill rate must be set to later in the year, the determination of the level of education funding comes into closer competition with the budget setting process for all other programs. At each legislative session the Legislature may determine when

it will adopt the budget for the upcoming fiscal year. The importance of a particular change in the deadline for establishing the mill rate of the uniform property tax will depend both upon the length of the change as well as upon the date which the Legislature chooses for adopting the budget.[1/] Because the date upon which the budget will be adopted is not set by statute, and thus cannot be predicted, any change in the deadline must be considered as a substantial change. Thus, we do not have to reach the question of whether a de minimis change in an initiated bill constitutes an amended form.

Form and Number of Competing Measures

In an opinion dated May 20, 1977, this office concluded that P.L. 1977, c. 109 constituted an amended form of the initiated bill to repeal the uniform property tax.[2/] Because c. 48 is also an amended form of the initiated bill to repeal the uniform property tax, a question arises as to the content and number of competing bills which will be submitted to the electorate.

Me. Const. Art. IV, Pt. 3, § 18 provides that initiated bills "shall be submitted to the electors together with any amended form. . .and in such manner that the people can choose between the competing measures or reject both." The use of the word "both" in the above quoted provision apparently limits the bills which can be sent to referendum to two - the initiated bill and one competing measure. See Farris ex rel Dorsky v. Goss, 143 Me. 227, 240 (1948) (dissenting opinion). Thus, c. 48 and c. 109 apparently cannot both be separate competing measures.

1/ L.D. 1828, AN ACT to Reform the State Budgetary Process, establishes May 1st as the date for setting the mill rate of the uniform property tax. According to the Statement of Fact, "[t]he purpose of the bill is to establish a uniform date for determining the current services expenditures, including education, by moving the existing deadline for setting education expenditures to May 1st. The same deadline for the Part I budget would be established through the Joint Rules."

2/ P.L. 1977, c. 109, repeals the language in 36 M.R.S.A. § 451-2 which establishes the mill rate of the uniform property tax at 12.5 mills for the years after June 30, 1977, and requires the Legislature to set the rate in accordance with 20 M.R.S.A. § 3747. Section 3747 requires the Legislature to annually establish the uniform property tax rate at a level such that revenues will not "exceed 50% of the basic education allocation."

Section 18 could be interpreted so that only one alteration of the initiated bill would constitute a competing measure. For example, the first alteration enacted by the Legislature (c. 48) could be the sole competing measure. However, such an interpretation could result in a total frustration of the initiative process. If alterations of the initiated bill enacted subsequent to the first alteration are not subject to the restrictions of § 18, then the Legislature can amend the initiated measure without limitation. Thus, at referendum, the electorate will vote whether to approve or disapprove of an initiated bill which has been substantially altered from its original form.

In Dorsky, the Supreme Judicial Court explained that

> The right of the people, as provided by [§ 18] of the Constitution, to enact legislation and approve or disapprove legislation enacted by the legislature is an absolute one and cannot be abridged directly or indirectly by any action of the Legislature. 143 Me. 227, at 231.

The interpretation of § 18 set forth in the preceding paragraph (that only the first alteration of the initiated bill constitutes an amended form) permits the Legislature to abridge the electorate's right to enact initiated bills. In order to avoid the possibility of this interference with the initiative process, the amended form submitted to the electorate should contain the sum of all amendments of the initiated bill which are construed as constituting competing measures. Thus the competing measure which will be submitted to the electorate at the referendum on the initiated bill to repeal the uniform property tax will include both c. 48 and c. 109. Again, it should be noted that § 18 does not require all amendments of the initiated bill to be submitted to the electorate. Rather, § 18 only requires that any amended form of the initiated bill be sent out to referendum. The literal meaning of the term "amended form" can encompass the sum of all legislative alterations of the initiated bill. Moreover, such an interpretation protects the integrity of the initiative process from legislative frustration.

Very truly yours,

Joseph E. Brennan

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