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Ma Const Art 4 Pt 3rd sec. 9
Revenue Raising Legislation
Legislature; Revenue Raising Bill

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DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

July 22, 1977

John P. O'Sullivan, Commissioner
Department of Finance and Administration
State of Maine
Augusta, Maine 04333

Re: L.D. 14, "AN ACT to Exempt Turbojet Fuel Used for International Flights from Sales Tax."

Dear Commissioner O'Sullivan:

This responds to your request for an opinion on the constitutionality of L.D. 14 as amended by Committee Amendment "A" and Senate Amendment "B" to Committee Amendment "A" and passed for enactment by the Maine Legislature.

FACTS:

L.D. 14, as introduced in the Maine Senate, provided for the exemption from the Maine sales and use tax (36 M.R.S.A. Chapters 211 to 225) of sales of turbojet fuel for international flights. The stated purpose of the bill was "to exempt turbojet fuel used for international flights from Maine's sales tax" in order to "make Bangor International Airport more competitive with other international airports and, therefore, enhance the opportunity for growth and development of Maine's only international airport." Committee Amendment "A" gave the bill emergency status and made a technical change in the wording and location of the exemption within the sales and use tax law. Senate amendment "B" to Committee Amendment "A" removed the emergency status and provided for a one cent per gallon increase in the gasoline tax on turbojet fuel. The bill, as amended by both the above amendments, was passed for enactment by both houses of the Legislature.

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Article IV, Part Third, Section 9 of the Maine Constitution reads as follows:

Section 9. Bills, orders or resolutions may originate in either House, and may be altered, amended or rejected in the other; but all bills for raising a revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other cases; provided that they shall not, under color of amendment, introduce any new matter, which does not relate to raising a revenue.

QUESTIONS:

1. Must a bill providing for a tax exemption originate in the House of Representatives?
2. If not, must an amendment to that bill which provides for an increase in an excise tax falling upon the beneficiaries of the exemption originate in the House of Representatives?

ANSWERS:

1. A bill providing for a tax exemption is not a "bill for raising a revenue" and, therefore, need not originate in the House of Representatives.
2. An amendment to a bill which is not a revenue-raising bill does not render the amended bill a "bill for raising a revenue," notwithstanding the fact that the amendment increases an existing tax, where the tax increase is incidental to a legitimate legislative purpose independent of generating revenue.

REASONING:

1. The constitutional provision in question was recently interpreted by this office in an opinion dated May 11, 1977, a copy of

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which is attached. As indicated in that opinion, constitutional requirements that revenue bills be introduced in the lower house have generally been very narrowly construed. L.D. 14 must therefore be viewed in that context.

The plain language of the Maine constitutional provision, "bills for raising a revenue" (emphasis added), strongly suggests that the restriction was to apply only to measures creating or increasing a tax, rather than to subsequent exemptions from that tax. Although a bill "to raise a revenue" has been consistently construed in Alabama to comprehend a bill reducing taxes, see, e.g., In re Opinion of the Justices, 190 So. 824 (Ala. 1939), no other state has adopted this construction. See In re Paton's Estate, 168 A. 422 (N.J. 1933), reaching opposite result. The Maine case of State v. Lasky, 156 Me. 419 (1960) further suggests that the literal construction would be adopted in Maine. In Lasky, a bill which simultaneously repealed and reenacted a tax in order to correct a conflict in section numbering was held not to constitute a "bill for raising a revenue." Of greater significance for the instant question was the Court's dictum that "[a] bill to repeal the quahog tax, taken alone, would not be a bill to raise revenue." 156 Me. at 423. If the complete repeal of a tax would not be deemed a revenue-raising bill, it would seem to follow that a partial repeal in the form of a tax exemption would receive the same construction.

Also relevant to the characterization of the bill in question is the line of authority, described in considerable detail in the May 11 opinion, holding that a bill originating in the upper house is not constitutionally defective if it has a legitimate purpose independent of generating revenue. See, e.g., Andrews v. Lathrop, 315 A.2d 860 (Vt. 1974). As indicated by its statement of fact, the turbojet fuel exemption bill was introduced to attract international flights to Bangor and, therefore, contribute to Maine's economic development. To restrict the origin of such a bill to the lower house would be to limit the power of the Maine Senate to deal with a critical element of the general welfare since many economic development initiatives involve tax exemption. Such a result does not conform with the narrow construction applied to constitutional revenue-raising restrictions in modern decisions and therefore must be rejected.

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2. Since L.D. 14, as introduced, is not a revenue-raising bill originating in the House of Representatives, senate amendment of the bill is not within the specific grant of authority of Article IV, Part Third, Section 9 of the Maine Constitution. Consequently, it is necessary to consider whether Senate Amendment "B" to Committee Amendment "A" changes the character of the original bill with the effect of bringing the amended bill within the constitutional restriction.

The increase in the gasoline tax arising from the senate amendment was apparently for the purpose of partially offsetting the financial impact of the sales tax exemption. Since the gasoline tax increase falls only upon the class of taxpayers which benefits from the sales tax exemption (i.e., purchasers of turbojet fuel for international flights), the gasoline tax increase is arguably tantamount to a reduction in the amount of exemption. Accordingly, to the extent that the bill as amended is viewed only as a lesser sales tax exemption than that contemplated by the original bill, the analysis of question 1 is controlling and the senate amendment does not render L.D. 14 a revenue-raising bill.

Also, if the two tax amendments are treated separately, the fact situation approaches that of Andrews v. Lathrop, supra. In Andrews, Vermont's Land Gains Tax, levied on the sale or exchange of land held by the transferor for less than six years, was held not to constitute a revenue bill. The result was based upon findings that the bill creating the Land Gains Tax was for the primary purpose of providing property tax relief to certain taxpayers and that the Land Gains Tax itself was designed to raise revenue specifically to fund the tax relief program. Similarly, the increase in the Maine gasoline tax resulting from Senate Amendment "B" was not designed as a general revenue measure but to partially "fund" the tax relief provided by the sales tax exemption. Thus, the tax increase is incidental to the primary purpose of L.D. 14 and therefore outside the constitutional revenue-raising restriction.

For the reasons stated above, L.D. 14 was not originally and is not, as amended, a revenue-raising bill and therefore was properly

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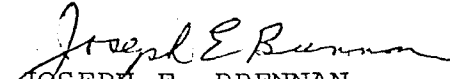
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passed for enactment.

I hope this analysis is helpful.

Very truly yours,


JOSEPH E. BRENNAN
Attorney General

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