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JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

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

December 1, 1977

Honorable Bennett D. Katz
27 Westwood Road
Augusta, Maine 04330

Honorable David G. Huber
430 Blackstrap Road
Falmouth, Maine 04105

Dear Senators Katz and Huber:

We are responding to oral requests for opinions of this office which both of you have made with regard to the effect of referendum approval of Initiated Bill No. 1 (L.D. 270), An Act to Repeal the State Property Tax. We are answering your questions together in light of the similarity of the subject matter and the urgency of your requests.

The basic question is what the legal effect would be if Initiated Bill No. 1 is approved by the voters of the State at the referendum to be held on December 5, 1977. The bill is an initiated measure which was not enacted without change by the Legislature, and if approved by the majority of voters at the referendum, it would become law in accordance with Article IV, Part Third, Section 18 of the Constitution of Maine. In other words, the Legislative power of the State is exercised by the people themselves rather than through their representatives in the Legislature with regard to this matter. Therefore, an affirmative vote on the initiated bill would generally have two immediate effects upon existing statutes, as discussed individually below.

Section 1 of Initiated Bill 1 would repeal and replace the first two paragraphs of 20 M.R.S.A. § 3742, which is an expression of legislative intent originally contained in the School Finance Act of 1976 (P.L. 1975, Chapter 660, Section 2). The two existing paragraphs expressed the legislative intent to use a uniform property tax to fund no more than 50% of the "basic education appropriation"

Honorable Bennett D. Katz
Honorable David G. Huber
Page 2
December 1, 1977

with the remainder of the appropriation (at least 50%) to be borne by general fund revenue sources other than the uniform property tax. In place of these two paragraphs, the following sentence would be enacted:

"It is the intent of the Legislature to provide at least 50% of the cost of operation of the public schools from General Fund revenue sources."

Although the term "cost of operation of the public schools" creates some ambiguity when read in conjunction with other portions of Title 20 M.R.S.A. Chapter 512-A (the School Finance Act of 1976), it is our belief that the intent of the initiators of this legislation was that at least 50% of the total cost of all educational expenditures in the State would be provided by the State out of general fund revenue sources, e.g. income and sales taxes.

Since the initiated bill does not specify the source of funding for the remaining "cost of operation," if any, and since the bill does not amend the allocation provisions of 20 M.R.S.A. Chapter 512-A, it would be highly speculative to attempt to guess how the other provisions of the Act might be utilized to further this intent. In other words, if the Legislature agrees with section 1 of the initiated bill as an expression of its intent, the Legislature would then have to decide what portion of the remaining 50% of the costs of operation would be financed with State funds and what manner or mixture of taxation would be used to collect the necessary revenues. The Legislature will be able to address these questions and also resolve any other ambiguities which may result from approval of the initiated measure, because such approval does not constitutionally restrict legislative action (discussed below) and also because repeal of the uniform property tax would not terminate its effectiveness until July 1, 1978. Opinion of the Justices, 370 A.2d 654 (1977).

It should also be noted with regard to section 1 of the Initiated Bill that the replacement provision is a statement of intent rather than a substantive provision of the law. Had the Initiated Bill been enacted by the Legislature without change, this provision would be a true expression of the intent of the Legislature. As matters now

1/ The term "the cost of operation of the public schools" might be interpreted in light of the definition of "operating costs" provided in 20 M.R.S.A. § 3743, sub-§ 5. If this definition were used, the "cost of operation" would not include transportation, community services, major capital expenditures, debt service or special and vocational education programs. In any event, the definition would differ from the current term "basic education appropriation."

Honorable Bennett D. Katz
Honorable David G. Huber
Page 3
December 1, 1977

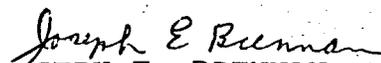
stand, if the initiated measure is approved at referendum, this provision will actually be an expression of the wishes of a majority of the voters. The provision would be of a precatory nature, expressing the desire or wish of a majority of the voters, but would have no constitutionally binding effect upon the future actions of the Legislature.

The implicit purpose of sections 2 through 6 of Initiated Bill No. 1 are to repeal statutory provisions currently found in Titles 20 and 36 which establish and set procedures for determining, assessing and collecting the uniform property tax.^{2/} It is our opinion that ratification of these sections at referendum would have the intended result of repealing the present state uniform property tax.

Two final matters must be noted in order to be responsive to your questions. First, since those provisions of Title 20, Chapter 512-A which relate to collection of information, recommendation of funding levels and appropriations for educational purposes would not be affected by Initiated Bill No. 1, the manner of making the statutorily required calculations of expenditures based upon previous year experience likewise would not be affected. There would be no requirement that the State calculate educational allocations on a current year basis. This conclusion is the result of reading the entire Chapter 512-A as a whole. Second, approval of the initiated measure would not constitutionally prohibit the Legislature from any future enactment of amendments. The general rule of law is that absent constitutional prohibitions, statutes enacted by referendum may be amended or repealed. Jones v. Maine State Highway Commission, 238 A.2d 226 (Me., 1968). The Constitution of Maine does not include such prohibition, except insofar as it relates to the legislation which can only be enacted by referendum, i.e. bond issues within the purview of Article IX, Section 14 of the Constitution. Opinions of the Attorney General, April 7, 1976, and July 18, 1977. Therefore, it would be constitutionally permissible for the Legislature in a subsequent session to repeal, amend or replace the provisions of section 1 of the initiated measure or otherwise address the subject matter of a uniform property tax despite the repeal by sections 2 through 6 of that measure.

We trust the foregoing discussion is responsive to your questions.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB:mfe
cc: Honorable James B. Longley
Legislative Leadership

^{2/} The Initiated Bill does not repeal certain other references to the uniform property tax found elsewhere in Title 20, e.g. 20 M.R.S.A. § 3457, Table II, first paragraph, last sentence, as amended by P.L. 1977, Chapter 78, Section 139.