

# MAINE STATE LEGISLATURE

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MA Const/Art 7 Sec 8

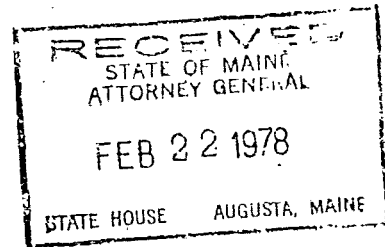
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February 21, 1978



Honorable Gordon Cunningham  
House of Representatives  
State House  
Augusta, Maine

Dear Representative Cunningham:

This responds to your request for advice concerning the constitutionality of proposed legislation which defines the term "just value" as "that value arising from the current use to which the particular parcel of land is being put."

FACTS:

"An Act to require the current use valuations of real estate," as proposed, repeals 36 M.R.S.A. § 701-A (as enacted by PL 1969, c. 246) and replaces it as follows:

§ 701-A. Just Value Defined.

In the assessment of property, assessors in determining just value are to define this term in a manner which recognizes only that value arising from the current use to which the particular parcel of land is being put.

QUESTION:

Would the proposed legislation, if enacted, violate any provisions of the Maine Constitution?

ANSWER:

The proposed legislation, if enacted, would violate the "just value" clause of Article IX, Section 8 of the Maine Constitution.

REASONING:

Aside from certain limited exceptions, Article IX, Section 8 of the Maine Constitution requires that:

"All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally, according to the just value thereof. . . ."  
(emphasis added).

The term "just value" embodies a constitutional standard that all assessors must heed when real property is valued for purposes of taxation. The Supreme Judicial Court of Maine has maintained consistently that the constitutional "just value" standard is met by assessors when they value property in accordance with its "market value", "true value", or "real value". Frank v. Assessors of Skowhegan, 329 A.2d 167, 173 (1974); Kittery Electric Light Co. v. Assessors of the Town of Kittery, 219 A.2d 728, 734 (1966); Sears, Roebuck v. Presque Isle, et al., 150 Me. 181, 188 (1954); Sweet v. City of Auburn, 134 Me. 28, 31 (1935). The Court has stated frequently that many factors may be considered by assessors in determining the just value of property. Among these are: "all the uses to which the property may be put by an owner", Sweet v. City of Auburn, supra, 32, and "that price a willing buyer would pay a willing seller at a fair public sale," Frank v. Assessors of Skowhegan, supra, 471. In short, the constitutional "just value" standard requires assessors to value real estate in accordance with its fair market value.

Article IX, Section 8 of the Maine Constitution was amended in 1970. Although the "just value" clause was retained, the amendment allows the Legislature to provide for the taxation of certain types of real estate in accordance with a valuation based on the current use of such property. The amendment, in pertinent part, states:

"Nothing shall prevent the Legislature from providing for the assessment of the following types of real estate wherever situated in accordance with a valuation based upon the current use thereof and in accordance with such conditions as the Legislature may enact:

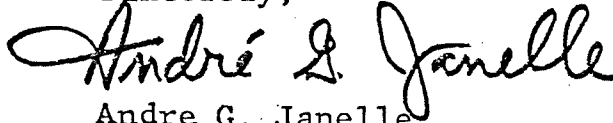
1. Farms and agricultural lands, timberlands and woodlands;
2. Open space lands which are used for recreation or the enjoyment of scenic or natural beauty;
3. Lands used for game management or wildlife sanctuaries."

Examples of legislation removing lands from "just value" valuation are the Tree Growth Tax Law (36 M.R.S.A. § 572, et seq.) and the Farm and Open Space Tax Law (36 M.R.S.A. §1101, et seq.) In short, the Legislature may remove certain types of real estate (as specified in the 1970 amendment to Article IX, Section 8, Me. Const.) from "just value" valuation.

In view of the foregoing analysis, it is clear that the proposed legislation, if enacted, would violate Article IX, Section 8 of the Maine Constitution. First, while the Legislature has power to remove some types of real estate from "just value" valuation, the Constitution does not permit the Legislature to remove all real estate from "just value" valuation. In this respect the proposed legislation exceeds the limitations of the Constitution of Maine. Second, the proposed legislation defines the term "just value" so narrowly that it means current use value. It is clear that such a definition is contrary to the consistent interpretation of the Supreme Judicial Court that the "just value" clause requires assessors to value property at its fair market value.

In closing, the Legislature may not lawfully provide for the current use valuation of all real estate until the Constitution of Maine is amended further.

Sincerely,



Andre G. Janelle  
Assistant Attorney General

AGJ:spa