

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 27, 1978

Honorable James F. Wilfong
House of Representatives
State House
Augusta, Maine

Re: Constitutionality of 20 M.R.S.A. § 305, Alternate Methods A and B.

Dear Representative Wilfong:

This is in response to the question you raised in your letter of February 2, 1978, as to whether School Administrative District (SAD) cost sharing formulae authorized under Alternate Methods A and B of 20 M.R.S.A. § 305 "meet the Constitutional requirements of Article 9, Section 8?"

There are no districts which utilize Alternate Method A's cost sharing formula.^{1/} Alternate Method A would require that a member municipality shall meet its share of the district's cost by raising "20 mills on its state valuation." The municipality's share of any additional appropriation required by the district would be based upon the number of pupils residing in the municipality with certain limitations which do not affect this opinion.

Several districts do utilize Alternate Method B's cost sharing formula which authorizes district costs to be shared "partly on the number of pupils in each municipality and partly on the state valuation of each municipality." Each cost sharing formula adopted under Alternate Method B is subject to approval by the State Board of Education.

Article IX, Section 8, of the Maine Constitution provides:

"All taxes upon real and personal estate,
assessed by authority of this State, shall

^{1/} This fact is based upon information supplied by the Management Information Division of the Department of Educational and Cultural Services.

be apportioned and assessed equally, according to the just value thereof." (Certain exceptions are enumerated, but are not controlling in this issue.)

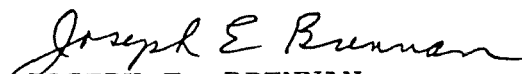
The Supreme Judicial Court of Maine has interpreted this language to require that a taxing district apply its taxes uniformly and that such uniformity cannot exist unless there is uniformity in both the basis of the tax assessment and in the rate of taxation. The Court has also declared the ultimate purpose of Section 8 is that taxes shall be uniformly assessed so that all taxpayers are taxed equally. Kittery Electric Light Co. v. Assessors of Town of Kittery, 219 A.2d 728 (Me., 1966); Spear v. City of Bath, 125 Me. 27, 130 A. 507 (1925).

An analysis of the data on file at the Department of Educational and Cultural Services of those SAD's which have adopted Alternate Method B reveals that the member municipalities within a given SAD are subject to being taxed at different mill rates.

In conclusion, Alternate Method A, because of its requirement of a 20 mill tax effort based on state valuation probably would not run into a constitutional problem in being applied, since a district probably would be able to meet all of its needs without exceeding a 20 mill effort. However, if more than a 20 mill effort were required, then Alternate Method A would probably encounter serious constitutional hurdles because it would probably result in taxes not being uniformly assessed upon all the taxpayers with a given SAD.^{2/} Alternate Method B also encounters serious constitutional hurdles since it has resulted in taxes not being uniformly assessed upon all the taxpayers within an SAD which has adopted Alternate Method B's cost sharing formula.

The 108th Legislature may wish to correct the constitutional weaknesses of Alternate Methods A and B by making legislative changes. My office is prepared to assist the Legislature in addressing this problem.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

^{2/} An analysis of an SAD's taxing authority is contained in the February 2, 1978, Attorney General Opinion to James J. Vickerson, Deputy Commissioner, Department of Educational and Cultural Services.