

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

*Legislative Special Committee on Education  
and Court Act 14, Pt 3 Sec 13*

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

March 15, 1978

Honorable John E. Masterman  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Masterman:

I am responding to your oral request for advice from this office on a question of whether legislation you are proposing would cause any constitutional problems. The proposed legislation would exempt SAD 41 from certain provisions of the recently enacted School Finance Act of 1978, specifically those provisions found in 20 M.R.S.A. § 4751, sub-§ 3, and would allow the SAD to raise local leeway funds so long as four of the five member municipalities have made a tax effort equivalent to the subsidy index under the Act.

You have indicated your belief that this legislation is necessary because of a unique situation within SAD 41 created by the legislation which established the District (P. & S.L. 1965, chapter 68, as amended by P. & S.L. 1967, chapter 104). Because of the special financing provisions set forth in these organic statutes, four of the five municipalities within the District would have to assess themselves in excess of 11 mills in order to raise the amount of the local allocation for the entire District (Unit) and thereby qualify to appropriate additional funds as "local leeway." 20 M.R.S.A. § 4751, sub-§ 3. Your proposed legislation would allow the District to participate in "local leeway" if these four municipalities raised their share of the Unit's local allocation to the extent of the subsidy index (10 mills).

In light of the urgency of your request, we have attempted to give you this answer as quickly as possible, which has limited the amount of research which we would perform. However, with this limitation, we do not believe that your proposed legislation, if enacted, would present constitutional problems.<sup>1/</sup>

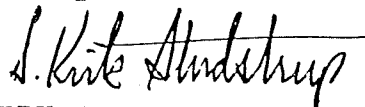
<sup>1/</sup> This opinion does not comment upon the constitutionality of the legislation which created the special financing arrangement within the District.

Generally speaking, special legislation may take precedence over general statutory provisions. Beckett v. Roderick, 251 A.2d 427 (Me., 1959). The Supreme Judicial Court has indicated on numerous occasions, specifically with reference to Article IV, Part Third, Section 13 of the Constitution, that the Legislature may not constitutionally enact a special law which dispenses with the general law and thereby grants a privilege to one individual, leaving all other persons subject to the operation of the general law.<sup>2/</sup> However, it is not clear whether this doctrine applies to exceptions from the general law given to governmental subdivisions which are themselves created by the Legislature. Therefore, we cannot categorically state that your proposed legislation would violate this principle, and we believe the proposed legislation should be given the benefit of the doubt.

We have also examined your proposed legislation in light of the provisions of Article IX, Section 8 of the Constitution concerning valuation of property and assessment of taxes. Your proposed legislation, on its face, does not appear to conflict with these constitutional provisions, since the legislation itself does nothing more than allow additional unit appropriations under specified conditions.

In light of the foregoing, we advise that your proposed legislation does not appear to create any constitutional problems, based upon the limited research we have been able to perform.

Sincerely,



S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:mfe

---

2/ Opinion of the Justices, 146 Me. 316, 322 (1951); Opinion of the Justices, 157 Me. 104, 108 (1961); Maine Pharmaceutical Association v. Board of Commissioners, 245 A.2d 271 (Me., 1968), Look v. State, 267 A.2d 907 (Me., 1970).