

# MAINE STATE LEGISLATURE

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August 1, 1978

Honorable William J. Garsoe  
70 Blanchard Road  
Cumberland, Maine 04021

Dear Representative Garsoe:

This responds to your request for advice as to whether legislation to exempt the first \$35,000 of value of a primary residence from the property tax would require a constitutional amendment. While the matter is not entirely free from doubt, it is our opinion that a constitutional amendment would not be necessary to permit legislation to exempt the first \$35,000 of value of a primary residence from State property taxation. However, we suggest that the Legislature might best resolve the matter and avoid subsequent uncertainty by posing questions to the Supreme Judicial Court once specific legislation is presented.

The Maine Constitution, Article IX, Section 8, provides in pertinent part 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. . . ."

This provision of the Maine Constitution has been consistently interpreted to require that property of equal value, within a particular taxing district, be assessed at equal rates.

The exceptions to this rule are:

(a) Properties such as farm and open space lands, timberlands, and game management and wildlife sanctuaries upon which different methods of valuation are permitted by the Constitution; and,

(b) Properties which are wholly or partially exempt from taxation pursuant to provisions of law, such as 36 M.R.S.A. §§ 652 and 653. The exemptions include properties of charitable, educational and religious institutions and veterans.

The exemptions provided by the above statutes and other efforts to differentiate property taxes have been discussed in numerous decisions of the Maine Supreme Judicial Court, including Opinion of the Justices, 155 Me. 30 (1959); Opinion of the Justices, 141 Me. 442 (1945); In Re Maine Central Railroad Company, 134 Me. 217 (1936); Opinion of the Justices, 133 Me. 525 (1935); Brewer Brick Co. v. Inhabitants of Brewer, 62 Me. 62 (1872). Exemptions are justified by the doctrine that statutes creating exemptions create separate classes of property and that such separate classes of property may be exempted from taxation without violating the provisions of Article IX, Section 8.

The Court has noted that Article IX, Section 8 "does not require the Legislature to impose a tax upon all property within the State, but only that any tax which shall be lawfully imposed upon any kind or class of real or personal property shall be apportioned and assessed upon all such property equally." Opinion of the Justices, 141 Me. 442, 446-447 (1945).

Thus the Legislature has authority to determine what classes of property are taxed and what classes are exempt. However, the Legislature, once it decides to tax property, may not provide for one mode of assessment for one class of property and another mode of assessment for another class of property. Opinion of the Justices, 155 Me. 30, 47 (1959). The only question with a partial exemption of primary homes to the first \$35,000 in value is whether such act is an exemption, as it appears to be, or whether such act constitutes a different mode of assessment for one class of property compared to other classes of property.

A review of the above-cited cases and other cases in Maine and the statutory exemptions currently in effect indicates that Article IX, Section 8, has been subject to relatively liberal interpretation, both by the courts and by the Legislature to allow a wide-range of exemptions creating separate classifications for purposes of total or partial exemption from property taxation. Despite this past history of interpretation of Article IX, Section 8, we cannot state with absolute assurance that the courts would permit a partial exemption which

extended to all primary homes in the State. Such an exemption, although amply justified as a policy matter by the severe burden of property taxation borne by many homeowners, would have broad impact on the property tax system. The proposed exemption, if adopted without the benefit of an advisory court opinion, might be subject to challenge on the grounds that it creates different modes of assessment for primary homes compared to other non-exempt real estate. While we believe the proposed exemption would probably be upheld, there could be considerable uncertainty and confusion in local tax collections during the pendency of litigation.

Accordingly, we would suggest that if the Legislature is to consider such a property tax exemption, the Legislature should pose a question to the Supreme Judicial Court in order that it might determine whether such an exemption for part of the value of primary homes could properly be enacted by statute or would require a constitutional amendment.\* This would allow for resolution of the question with some certainty prior to the time when the Legislature must reach a decision on whether a statutory amendment is sufficient or a constitutional amendment is mandatory to achieve the end of tax relief for primary homeowners.

I hope this information is helpful.

Sincerely,



JOSEPH E. BRENNAN  
Attorney General

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\* In your further consideration of this matter, you should note that there is currently proposed to go to the voters in November an amendment to the Constitution which would modify Article IX, Section 8, as that Article applies to assessments by School Administrative Districts. The amendment would permit School Administrative Districts to assess charges according to any cost sharing formula which may be authorized by the Legislature. Constitutional Resolutions 1978, Chapter 6.