

MAINE STATE LEGISLATURE

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County Tax Exemptions Per Town
MA CONST ART 9 sec. 8
County Taxes

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December 11, 1978

Honorable John D. Chapman
State Senator
Day's Ferry
Woolwich, Maine 04579

Dear Senator Chapman:

We are responding to your letter of November 17, 1978, in which you requested an opinion from this office on the constitutionality of proposed legislation concerning municipal exemption from county taxes. It is our understanding that the proposed legislation would be designed to exempt a certain municipality or municipalities which have their own police department from payment of that portion of the county tax which is to be used for support of the sheriff's office. It is difficult for us to make an unambiguous response to your question without the benefit of reviewing an actual draft of the proposed legislation. However, assuming that the legislation would provide solely for a partial tax exemption, it is our opinion that such legislation would be of questionable constitutionality in light of the provisions of Article IX, Section 8, of the Maine Constitution and the method under which the county sheriffs' offices are financed.

The constitutional provision reads, in pertinent part:

"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; . . . "

The office of sheriff is an integral part of county government in the State of Maine, both as a matter of history and as a matter of statute. 30 M.R.S.A. c. 1, sub-chap. VI.

The sheriff is the county's chief law enforcement officer and performs a number of county-wide services. 30 M.R.S.A. §§ 1001 and 1121, et seq. Although the statutes have recently allowed county government to provide sheriff patrol services to municipalities on a contract basis (30 M.R.S.A. § 1122), nearly the entire funding for the sheriff's department in any given county is provided for in the county budget. The county budget, in turn, is subject to legislative approval, and it is this budget which forms the basis for the property tax authorized by the Legislature for the support of county government. 30 M.R.S.A. § 251, et seq. It is therefore clear that the county property tax, including that portion used for support of the sheriff's department, is a tax assessed by authority of the State and is subject to the provision of the Constitution quoted above.

The constitutional provision has been interpreted as requiring ". . . 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 (1945). Consequently, a State-wide tax would have to be applied equally to all taxable property throughout the entire State, without except or exemption for any geographical area or political subdivision, in order to meet this constitutional criteria. Opinion of the Justices, 146 Me. 239, 248 (1951). The same rationale applies to county-wide taxes. Opinion of the Justices, 97 Me. 595 (1903).

The legislative proposal which has been presented to you would not exempt any particular type or class of property from county taxation. Rather, the proposal would exempt all otherwise taxable property within a political subdivision from a certain portion of the county tax. The practical result of such proposal would be a lowering of the county tax rate for the exempted municipality vis-a-vis other municipalities within the county. In light of this practical effect, the legislative proposal would be constitutionally questionable under the provisions of Article IX, Section 8.

Please continue to call upon us whenever we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

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