

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)

Excise tax - constitutionality of airport use tax
Me. Const., Art IX, § 8

O'Brien 19-7

RICHARD S. COHEN
ATTORNEY GENERAL



JOHN M. R. PATERSON
DEPUTY ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

January 26, 1979

The Honorable James McBreairty
Maine Senate
Legislative Post Office
Augusta, Maine 04333

Re: Airport use charge

Dear Senator McBreairty:

I am writing in response to your opinion request in which you asked whether: (1) the Legislature can constitutionally authorize the City of Presque Isle to finance operation of its airport by imposing a surcharge on airline tickets bought by passengers departing from that airport on commercial flights; and (2) whether residents of Presque Isle can constitutionally be exempted from such a surcharge. Although this office has not been presented with a specific proposal for evaluation, I am of the opinion that legislation of this kind is constitutional in concept.

First of all, the proposal would not violate Article IX, Section 8 of the Maine Constitution, which requires that all real and personal estate taxes be apportioned equally. Since the proposed airport tax would be levied upon "performance of an act [the boarding of a commercial flight] . . . or the enjoyment of a privilege [of using the Presque Isle airport facilities]", it would constitute an excise tax and not a real or personal estate tax. See Opinion of the Justices, 335 A.2d 904, 911-912 (Me. 1975). The Supreme Judicial Court, in considering the validity of a bill which would have authorized the City of Portland to impose a general business and occupation tax, assessed the validity of excise taxes levied by a single municipality:

The Legislature may constitutionally grant the right to one sole municipality to levy by ordinance reasonable and unoppressive, excise, business, occupational, gross receipts and gross business income taxes when such right is not granted at the same time to all other municipalities in the State [court's emphasis] Opinion of the Justices, 159 Me. 420, 425 (1963).

The proposal also would not violate the Commerce Clause of the Federal Constitution. On this point, the United States Supreme Court has upheld two similar taxes against constitutional attack, concluding that

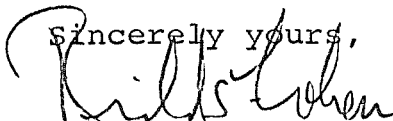
. . . a charge designed only to make the user of state-provided facilities pay a reasonable fee to help defray the costs of their construction and maintenance may constitutionally be imposed on interstate and domestic users alike, Evansville-Vanderburgh Airport Authority v. Delta Airlines, 405 U.S. 707, 714 (1972).

In reaching this result, the Court required that such charge: 1) not discriminate against interstate commerce and travel; 2) fairly approximate, in its scope, the actual use of the facilities (the Court held that imposition of the charge only upon boarding commercial passengers did fairly approximate total use); and 3) not be excessive in relation to costs incurred by the taxing authority. 405 U.S. at 717-720.

Finally, it does not appear that the part of the proposal which would exempt the residents of the City of Presque Isle from paying the tax violates the Equal Protection Clauses of the United States and Maine Constitutions. While no cases can be found squarely on point, the use of differential rates for city or state-operated facilities has been upheld in other contexts where the differential was designed to offset contributions made by residents through other forms of taxation. See Hyland v. Borough of Allenhurst, 372 A. 1133 (N.J. 1977) and McFall v. City of Shawnee, 559 P.2d 433 (Okla. 1976) (recreation facilities) and Clarke v. Redeker, 259 F. Supp. 117 (S.D. Iowa 1966), aff'd 406 F.2d 883 (8th Cir. 1969), cert. den. 396 U.S. 862 (1969), (state university tuition.) Consequently, it appears that exemption of Presque Isle residents from the proposed surcharge would not violate constitutional equal protection guarantees, provided that municipal tax revenues other than the airport surcharge are used to finance operation of the airport and the exemption tends to equalize non-resident and resident contributions to the facility.

In conclusion, if the surcharge proposal were to conform to the criteria set forth in this opinion, we do not believe that it would conflict with any federal or state constitutional provisions.

Sincerely yours,


RICHARD S. COHEN
ATTORNEY GENERAL

RSC:jg