

MAINE STATE LEGISLATURE

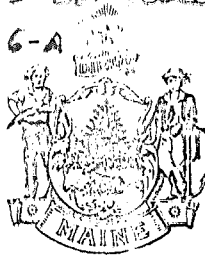
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*Special legislation - unconstitutional,
Me. Const. - Art I, 16-A
Art IV, pt. 3, § 13*

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79-16

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DEPARTMENT OF THE ATTORNEY GENERAL
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February 7, 1979

The Honorable James K. McMahon
House of Representatives
State House
Augusta, Maine 04333

Dear Representative McMahon:

This responds to your request for advice concerning certain special legislation you intend to prepare and introduce during the current session. The facts you related in your written request appear below.

During the years 1973 through 1977 the Town of Kennebunk mistakenly overvalued the property of a taxpayer because of an error in the town's property tax records. This resulted in an overpayment of property taxes, \$648.83, by the taxpayer in question. The selectmen of the town have considered refunding the sum to the taxpayer. They have been advised by the town's attorney that the town has no statutory authority to make such a refund. In the opinion of the town attorney the taxpayer has but one remedy, tax abatement, but the remedy is no longer available since it must be pursued within a year of the tax assessment.

You wish to prepare and submit special legislation which would authorize the selectmen of Kennebunk to place the tax refund question before the next town meeting. You have asked whether or not such special legislation would be prohibited by the general laws or the constitution of this state.

It is our opinion that the type of special legislation you wish to introduce would violate the Equal Protection Clause (Art. I, § 6-A) and the Special Legislation Clause (Art. IV, pt. 3, § 13) of our constitution.

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The Maine Supreme Judicial Court has applied an equal protection analysis to special legislation in several cases. See Nadeau v. State, 395 A.2d 107 (1978); Look v. State, 267 A.2d 907 (1970); Maine Pharmaceutical Association v. Board of Commissioners, 245 A.2d 271 (1968); Lewis v. Webb, 3 Me. 326 (1825). A review of these and other cases indicates that the courts will not hesitate to strike down, on equal protection grounds, special legislation "granting legislative dispensation from the general requirements of the law with the distinct possibility of different legislative treatment for two individuals who are in all material respects identical." Nadeau v. State, supra, 113.

In the case at hand it is clear that the Legislature has provided taxpayers with a remedy. A taxpayer can challenge an overvaluation by abatement under 36 M.R.S.A. § 841 (where the opinion of the assessors as to value is challenged) or by suit under 36 M.R.S.A. § 504 (where taxpayer has been damaged as a result of ministerial mistakes, errors or omissions of taxing officials). See Eastport Water District v. Inhabitants of City, 288 A.2d 718 (1972). Of course, a taxpayer must avail himself of any remedy within the time provided by the Legislature.

The fundamental problem with the legislation you propose is that it would exempt one taxpayer from the general property tax laws relating to overassessments while leaving all other taxpayers subject to the general laws. This type of legislative favoritism violates the equal protection guarantee that persons similarly situated will be treated similarly by the government.

The special legislation you described would also violate the Special Legislation Clause of the Maine Constitution. The Special Legislation Clause requires the legislature to enact general legislation except in those limited situations where the legitimate objects of the law can be attained only by using special legislation. See Nadeau v. State, supra, 112-114.

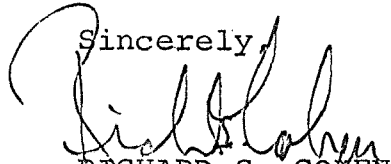
The case at hand is an instance where general legislation can be fashioned to address the problem which you described. This might be accomplished by creating a new remedy or, perhaps, by extending the period during which an existing remedy may be available.

In conclusion, it is our opinion that the problem you describe may be addressed by general legislation which treats all similarly situated taxpayers in a similar way. Until such legislation is enacted, an aggrieved taxpayer is subject to the general tax laws regarding overassessments.

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Since every resolve must be individually evaluated to determine whether it violates the principles enunciated in Nadeau, this opinion should not be construed as an indication of our views on other resolves which we have not had the opportunity to review.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC/ec