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RICHARD S. COHEN
ATTORNEY GENERAL

JOHN M. R. PATERSON
DEPUTY ATTORNEY GENERAL

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

February 15, 1979

Senator Donald O'Leary
Maine State Senate
Augusta, Maine 04333

Re: Constitutionality of Proposal that any Town paying 45% or more of County Tax Appropriation Automatically Have a Representative on the Board of County Commissioners.

Dear Senator O'Leary:

You have requested an opinion regarding the constitutionality of legislation which would provide that any municipality that pays 45% or more of the county tax appropriation would automatically have a representative on the Board of County Commissioners. For the reasons stated below, it is my opinion that such a proposal would violate the Fourteenth Amendment to the United States Constitution.

Under present law, each county has three commissioners who each serve for a four year term. 30 M.R.S.A. §101. Beginning in 1969, the Legislature began a legislative program whereby each county is divided into three commissioner districts. See 30 M.R.S.A. §§105-A to 105-U. The three commissioner districts within each county appear to be substantially equal in population. Moreover, the Legislature has provided that each commissioner district will have a representative from that district on the Board of County Commissioners.

In Westberry v. Sanders, 376 U.S.1 (1969) the United States Supreme Court held that in Congressional elections each person's vote must be substantially equal in weight. This principle of "one man-one vote" was later applied to elections

for representatives to State legislatures.[1] See Reynolds v. Sims, 377 U.S. 533 (1964). Subsequently, the United States Supreme Court applied the "one man-one vote" principle to county governmental units. Avery v. Midland County, 390 U.S. 474 (1968). As stated by the Court in Hadley v. Junior College District of Metropolitan Kansas City, 397 U.S. 50 (1970),

> "... a qualified voter in a local election... has a constitutional right to have his vote counted with substantially the same weight as that of any other voter in a case where the elected officials exercised 'general governmental powers over the entire geographic area served by the body'"

Id. at 53 quoting Avery v. Midland County, 390 U.S. at 485. Thus where a Board of County Commissioners exercises "general governmental powers," the election of members to that Board is governed by the Equal Protection Clause of the Fourteenth Amendment, and, in particular, the "one man-one vote"[2] principles articulated by the United States Supreme Court.

There can be little question that County Commissioners in the State of Maine exercise general governmental powers in the area over which they have jurisdiction. For example, the county commissioners have the power to tax, to maintain and repair courthouses and jails, and to borrow money. (See 30 M.R.S.A. §§251, 301, and 404 respectively). County Commissioners in Maine certainly exercise governmental powers and therefore fall within the scope of the Supreme Court's decision in Avery v. Midland County, supra.

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1. In Maine, the State Constitution expressly provides for apportionment of the State into Representative and Senatorial Districts based on population. See Art. IV, Pt. 1, §§2 and 3; Art. IV, Pt.2., §§1 and 2. This has been done, of course, in order to comply with equal protection requirements. For an examination of the "one man-one vote" principle as it has been applied to apportionment in the State of Maine, see In re Apportionment of the House of Representatives, Me., 315 A.2d 211, amended as to description of certain districts, 316 A.2d 508 (1974).

2. Prior to the Supreme Court's decision in Avery v. Midland County, supra., several state and federal courts had applied the one man-one vote principle to local governmental units. See, e.g., Hyden v. Baker, 286 F.Supp. 475 (D.C.M.D. Tenn. 1968); Martinolich v. Dean, 256 F.Supp. 612 (D.C.S.D. Miss. 1966); Miller v. Board of Supervisors, 63 Cal.2d 343, 405 P.2d 857, 46 Cal.Rptr. 617(1965); Montgomery County Council v. Garrott, 243 Md. 634, 222 A.2d 164(1966); Hanlon v. Towey, 274 Minn. 187, 142 N.W.2d 741(1966); Armentrout v. Schooler, 409 S.W.2d 138 (Mo.1966); Seaman v. Fedourich, 16 N.Y.2d 94, 209 N.E.2d 778, 252 N.Y.S.2d 444 (1965); Dailey v. Jones, 81 S.D. 617, 139 N.W.2d 385(1966); State ex rel. Sonneborn v. Sylvester, 26 Wis.2d 43, 132 N.W.2d 249 (1965).

In view of the Supreme Court's decisions addressing the principle of "one man-one vote," it is apparent that a proposal to provide that all municipalities within a county which pay 45% or more of the county tax appropriation would automatically have a representative from that municipality on the Board of County Commissioners, would run afoul of the Fourteenth Amendment. Such a proposal would dilute the votes of those persons who are residents of towns paying less than 45% of the county tax appropriation.[3] The proposal discriminates between voters on the basis of the amount of county tax a particular municipality pays. Such a distinction is not reasonable and offends the concept of "one-man one vote."

I hope the foregoing information is helpful to you and if I can be of further assistance to you, please feel free to contact me.

Sincerely,

RICHARD S. COHEN
Attorney General

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3. For example, assume a municipality pays 45% of the county tax appropriation but has only 20% of the county population. If this municipality were to automatically have a representative on the Board of County Commissioners, the voters in that municipality would, at a very minimum, be electing one-third of the representatives on the Board. Consequently, the votes of these residents would have a weight and influence disproportionate to the actual population of the municipality. Conversely, the voters of a different municipality with a lower county tax assessment but a higher population would have their votes diluted.