

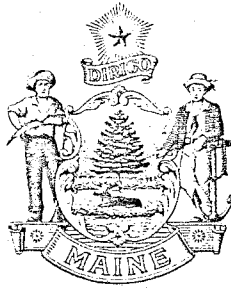
MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

March 6, 1979

Honorable David G. Huber, Chairman
Honorable Michael D. Pearson, Chairman
Committee on Appropriations and
Financial Affairs
State House
Augusta, Maine 04333

Dear Senator Huber and Representative Pearson:

I am writing in response to your request for advice concerning the constitutionality of two bills which are being reviewed by the Committee on Appropriations and Financial Affairs. These bills are L.D. 32, "Resolve to Reimburse Codman-Portland Associates of Boston, Massachusetts for Overpayment of Sales Tax in the Amount of \$3,397.26"; and L.D. 457, "Resolve, Reimbursing Bugbee-Brown, Inc., for Overcollection of \$289.95 in Cigarette Taxes."*

In determining the constitutionality of these proposed Resolves, we have paid particular attention to the Law Court's opinion in the recently decided case of Nadeau v. State, 395 A.2d 107 (1978). The Court's opinion indicates that special and private legislation is subject to review under the Equal Protection Clause (Art. I, § 6-A) and the Special Legislation Clause (Art. IV, Pt. 3, § 13) of the Maine Constitution because "where some individuals are appropriated money or permitted to sue the State while others are not, the equal protection clause. . . is necessarily implicated. . . . Moreover, the vehicle by which the Legislature authorizes payment or suit is a private bill, thereby activating the special legislation clause. . . ." Nadeau, supra, 111-112.

* We are still examining the constitutionality of L.D. 32 ("Resolve to Reimburse the Town of Eastbrook in the Amount of \$25,644.35 for Losses Caused by Excessive State Valuation") to determine whether the conclusions stated in this letter apply when the recipient of the benefit is a municipality.

The Court has voided resolves on equal protection grounds in several cases. See, Lewis v. Webb, 3 Me. 326 (1825); Durham v. Lewiston, 4 Me. 140 (1826); Milton v. Bangor Railway & Electric Co., 103 Me. 218 (1907); Maine Pharmaceutical Association v. Board of Commissioners, Me., 245 A.2d 271 (1968); Look v. State, Me. 267 A.2d 907 (1970). Our review of these and other cases indicates that the Court 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.

The Court has also voided resolves on special legislation grounds. See, Opinion of the Justices, 157 Me. 104 (1961 advisory opinion); Maine Pharmaceutical Association v. Board of Commissioners, supra; Look v. State, supra. The Court's position in these and other cases is that 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. As the Court stated in Nadeau v. State, supra, 112: "As such, if a general law is practicable, viz., where general legislation has been enacted or could have been made applicable, passage of special legislation violates art. IV, pt. 3, § 13."

In light of these principles, we are of the opinion that L.D. 32 and L.D. 457, if enacted, would violate the Equal Protection Clause and the Special Legislation Clause of the Maine Constitution.

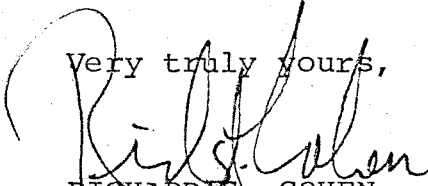
In the case at hand, it is clear that the Legislature has provided each taxpayer with a legal remedy by which he could have challenged the alleged overtaxation. Codman-Portland Associates (L.D. 32) could have sought a sales tax refund from the State Tax Assessor by filing a written application for the same within two years from the date of overpayment, 36 M.R.S.A. § 2011. Bugbee-Brown, Inc., (L.D. 457) could have redeemed the cigarette stamps in question had it applied to the State Tax Assessor within ninety days of the return of the cigarettes to the manufacturers, 36 M.R.S.A. § 4367. In each case, the taxpayer has failed to avail himself of the remedy provided by the Legislature within the time provided by the Legislature.

The fundamental equal protection violation that emerges is that each Resolve seeks to exempt one taxpayer from the operation of the general tax appeal statutes, while leaving all other taxpayers subject to these statutes. In essence, these Resolves each grant to one taxpayer a special right of appeal not enjoyed by other similarly situated taxpayers. This type of legislative favoritism violates the equal protection guarantee that persons similarly situated will be treated similarly by the government.

We have also concluded that each Resolve would, if enacted, violate the Special Legislation Clause of our Constitution. It is clear to us that the Legislature may remedy each one of these situations by enacting general legislation. This could be accomplished by fashioning a new remedy or by extending the period within which an existing remedy may be available to an aggrieved taxpayer. Since the use of general legislation is practicable, the passage of special legislation violates Article IV, Pt. 3, § 13 of the Constitution.

If we can be of any further assistance to you, please do not hesitate to call on us.

Very truly yours,



RICHARD S. COHEN
Attorney General

RSC/ec

cc: Honorable Robert M. Farley
Honorable John Joyce