

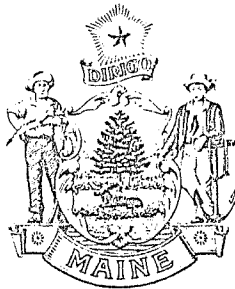
MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
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April 17, 1979

The Honorable Patrick Jackson
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Jackson:

This responds to your request for advice on the following questions:

1. Does article IV, part 3, § 23 require the Legislature to provide reimbursement to municipalities if it exempts watercraft from personal property taxation?
2. Does article IV, part 3, § 23 require the Legislature to provide reimbursement to municipalities if it exempts watercraft from personal property taxation and imposes an excise tax on watercraft?

It is our opinion that article IV, part 3, § 23 of the Maine Constitution requires the Legislature to provide reimbursement in each situation you described.

Article IV, part 3, § 23 provides that:

"The Legislature shall annually reimburse each municipality from state tax sources for 50% of the property tax revenue loss suffered by that municipality during the previous calendar year because of statutory property tax exemptions or credits enacted after April 1, 1978. The Legislature shall enact appropriate legislation to carry out the intent of this section." (emphasis supplied)

The scope of article IV, part 3, § 23 is quite limited. It is designed to provide some financial relief for municipalities experiencing property tax revenue losses caused by new property tax exemptions or credits enacted by the Legislature. It does not address any other tax matter.

The language of this new constitutional provision indicates that legislative reimbursement is required only if the Legislature enacts a new property tax exemption or credit which causes a property tax revenue loss for a municipality. If such a loss arises, reimbursement must be made from state tax sources for 50% of the loss.

It is our opinion that a statute exempting watercraft from personal property taxation would create a property tax exemption within the meaning of article IV, part 3, § 23. Legislative reimbursement would be for 50% of the property tax revenue loss sustained by each municipality as a result of the watercraft property tax exemption.

You have also asked whether the Legislature may waive its duty to reimburse municipalities by imposing an excise tax on watercraft in lieu of property taxation. We interpret this request as also asking whether the proceeds of this excise tax may be used to offset the reimbursement due from the Legislature.

We are of the opinion that the Legislature cannot waive its obligation to reimburse by simply imposing an excise tax on watercraft in lieu of property taxation. By exempting watercraft from property taxation the Legislature is causing a local property tax revenue loss whether or not an excise tax is imposed on watercraft. This property tax revenue loss must be reimbursed by the Legislature even if the municipality obtains an increase in excise tax revenues.

When reimbursement must be made, the Constitution directs that it be paid from "state tax sources." The decision to require that reimbursement be paid from state tax sources was one that stirred considerable debate in the Legislature and that debate sheds some light on what was meant by the term.

L.D. 1227, introduced in the 108th Legislature, was the first bill proposing a constitutional amendment requiring legislative reimbursement for local property tax revenue losses caused by property tax exemptions. This bill merely provided that reimbursement be made by the Legislature. Presumably this would have required reimbursement from state revenue and not from local revenue sources. Several amendments were introduced which, if passed, would have allowed the Legislature to avoid direct reimbursement by granting to municipalities the authority to impose new taxes to offset local property tax revenue losses caused by property tax exemptions. See, Senate Amendment "A," S-274; House Amendment "B," H-817; Senate Amendment "A" to House Amendment "B," S-332.

The legislative debate on these changes indicates that there was considerable dissatisfaction with the concept of offsetting legislative reimbursement by creating new local taxes. The remarks of two legislators are particularly instructive. Representative Bachrach made the following comments about the amendments referred to above:

"Subsequently to that, there were two amendments offered which in effect say that the state may escape its obligation to reimburse municipalities by means of allowing the municipalities to raise the money through revenue sources other than property taxes, only if the revenue sources are sufficient to yield the full amount of the annual reimbursement of 50 per cent of the property tax revenue loss. Well, to me, this absolutely destroys the intent of the bill because, obviously, the state will not be put on notice not to give out new property tax exemptions if they can, in fact, put the burden onto the municipality in some way by having them, in fact, raise the money."
Legislative Record, House, June 30, 1977, p. 2199.

Representative Carey voiced similar concerns:

"I know that the gentlelady from Brunswick, Ms. Bachrach, speaks as a municipal official, and I would stand here this evening and also speak as a municipal official and would point out that unless we go back to doing exactly what Ms. Bachrach is talking about, then we are getting ourselves into the position where we can have a local income tax, a local sales tax, and if you are going to start giving exemptions away, then I think you are going to have to face the responsibility that we are going to have to pay for them."
Legislative Record, House, June 30, 1977, p. 2216.

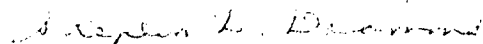
The amendments which would have permitted the Legislature to meet its reimbursement obligations by authorizing new local taxes were defeated. The Legislature referred the reimbursement bill to a Committee of Conference for amendment. The Committee's amendment, H-937, was adopted by both houses of the Legislature and became article IV, part 3, § 23 of the Maine Constitution. Senator Merrill described the amendment as follows:

"I think that it is probably one of the most important steps toward fiscal responsibility that remains to be taken by this Legislature, and it certainly does build in a rigidity, but one I think should be built in, and that is that, as we erode the tax bases of the local communities, that we at least be forced to show some fiscal restraint here from the fact that there will be state obligations that go with that generosity." Legislative Record, Senate, July 11, 1977, p. 2414.

Given this background, it is clear that reimbursement must be made from state revenue sources and not from local revenue sources. If an excise tax on watercraft is designed to generate state revenue and is assessed and administered by the State, then we believe that the revenues may be used to offset the Legislature's reimbursement obligation to municipalities. However, if the watercraft excise tax is designed principally to generate local tax revenue and is assessed and administered locally, then we believe that the revenues may not be used to offset the Legislature's reimbursement obligations.

I trust this response is helpful. If we may be of further assistance, please let us know.

Very truly yours,



STEPHEN L. DIAMOND
Deputy Attorney General

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