

# 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)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

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

November 21, 1980

Honorable Porter D. Leighton  
33 Front Street  
Harrison, Maine 04040

Dear Representative Leighton:

By letter dated November 3, 1980, you inquired as to the constitutionality of the proposed "Project Index" legislation. More specifically, a question has been raised as to whether the proposed act would result in an improper delegation of the Legislature's power of taxation. For the reasons stated below, we conclude that no such improper delegation would occur, and thus, the act would be constitutional.

The act is designed to adjust the individual income tax structure for inflation. First, an "inflation factor" is computed by taking one-half of the percentage increase in the consumer price index (CPI) for the current tax year compared to the CPI for the preceding tax year, and then adding one.<sup>1/</sup> The CPI is an average over a 12-month period of the "National Consumer Price Index for All Urban Consumers - United States City Average," computed and published monthly by the Bureau of Labor Statistics, U. S. Dept. of Labor. Then the adjustment is accomplished by multiplying the inflation factor by the dollar amounts of the standard deduction and the personal exemption and the dollar bracket amounts in the tax rate schedules. No adjustment is made if the inflation factor is 1 or less, and the inflation factor cannot exceed 1.07.

---

<sup>1/</sup> Expressed as a mathematical formula the inflation factor is determined as follows:

$$\text{inflation factor} = (.5 \times \frac{\text{CPI for current year} - \text{CPI for preceding year}}{\text{CPI for preceding year}}) + 1$$

Article IX, § 9 of the Constitution of Maine provides that "[t]he Legislature shall never, in any manner, suspend or surrender the power of taxation." In essence, this provision prohibits the Legislature from delegating its taxing power. See, City of Auburn v. Paul, 110 Me. 192, 85 A. 571 (1912). To determine whether the act complies with Article IX, § 9, it is necessary to decide whether the indexing law would delegate this power to the Department of Labor.

The Maine Supreme Judicial Court has recognized that the constitutional prohibition against delegation of powers does not deny the Legislature the flexibility necessary to carry out its policy. See, e.g., Dumond v. Speers, 245 A.2d 151 (1968). For the purposes of analyzing the delegation question involved in the indexing law, however, the most closely analogous cases come from other jurisdictions. In First Fed. S. & L. Assn. v. State Tax Comm'n., 372 Mass. 478, 363 N.E.2d 474 (1977), the Massachusetts Supreme Judicial Court held that even though a deduction allowed to a federal savings and loan association was determined by a federal agency decision concerning reserve requirements, the Legislature did not unconstitutionally delegate its powers. The Court noted:

. . . In numerous instances a taxpayer's obligation is affected by the conduct of other persons, but those other persons are not exercising the authority of the Legislature to tax. Their action may influence the amount of the tax payable, but the taxing power has not been delegated to them.

363 N.E.2d at 483.

Another closely analogous case is Michigan Baptist Homes v. City of Ann Arbor, 55 Mich. App. 725, 223 N.W.2d 324 (1974). The Michigan statute, limiting a property tax exemption to non-profit corporations which obtained financing under the federal National Housing Act, was held not to be an unconstitutional delegation to the Secretary of Housing and Urban Development even though the Secretary determined who would obtain financing under the National Housing Act.

The Federal official does not make a determination as to who shall receive the exemption. He merely determines which nonprofit corporations are eligible to receive Federal financing under [the National Housing Act.]

223 N.W.2d at 330.

The indexing law is sufficiently distinguishable from cases in which the Maine Law Court has found legislative enactments to constitute unlawful delegations of power. For instance, in State v. Vino Medical Co., 121 Me. 438, 117 A. 588 (1922), the Court held unconstitutional a state statute which, in its definition of intoxicating liquor, incorporated by reference future changes by Congress of the definition of that term under federal law. The indexing law is distinguishable from the law in question in Vino because of the nature of delegated power. In Vino, the Legislature was prohibiting the sale of intoxicating liquor and delegating the task of defining intoxicating liquor to Congress. Under the indexing law, however, the Department of Labor would not be able to effect such a substantive change in the income tax law of Maine. It is not an instance where the Legislature would abdicate its function by making some future federal law or regulation the law of Maine.<sup>2/</sup>

Pursuant to the indexing law, the Legislature would make the underlying policy judgment by deciding that income tax liability should be adjusted for inflation. The Legislature, not the Department of Labor, is the body which would determine that the dollar bracket amounts in the tax rate schedules, standard deduction, and personal exemptions be adjusted for inflation. The Legislature would devise the formula with which to determine the adjusted figures. The power to tax would not be delegated to the Department of Labor. The Department would not compute the tax rates nor the amount of tax due. Rather, the Labor Department would merely perform the ministerial function of computing the rate of inflation.<sup>3/</sup>

---

<sup>2/</sup> The type of state tax statute which might be invalid under Vino would be one which incorporated existing and future Congressional definitions of income. However, at least one court has held such a statute to be constitutional. Alaska Steamship Co. v. Mullaney, 110 F.2d 805 (9th Cir. 1950). See also People ex. rel. Pratt v. Goldfogle, 242 N.Y. 277, 151 N.E. 452 (1926) and Commonwealth v. Alderman, 275 Pa. 483, 119 A. 511 (1923) (holding no unconstitutional delegation when state statute provided that prospective federal legislation shall control).

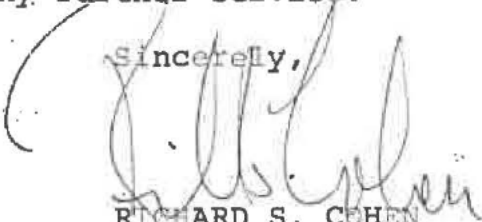
<sup>3/</sup> The effect of the Department of Labor's determination of the CPI is further limited under the proposed legislation, since the "inflation factor" is only one-half of the percentage increase in the CPI and since a seven percent ceiling is imposed on the inflation adjustment. Thus, changes in the CPI would not totally determine the extent of the inflation adjustment.

For convenience and economy to the State, the Legislature would merely utilize the Consumer Price Index as the measure of inflation to be used in the legislative formula to index the income tax structure. Indeed, the traditional measure of inflation is the Consumer Price Index, and it is used as such across the country. <sup>4/</sup> The Department of Labor is directed under federal law to compute this Index as an accurate measure of the inflation rate. See 29 U.S.C. § 2.

Since the proposed scheme would not delegate the Legislature's power of taxation to the Department of Labor, we conclude that the legislation would be constitutional.

I hope this information is helpful. Please feel free to call on me if I can be of any further service.

Sincerely,



RICHARD S. COHEN  
Attorney General

RSC/ec

---

<sup>4/</sup> Congress mandates the use of the CPI as the basis for calculating cost of living increases in many of its programs (e.g., military pensions, 10 U.S.C. § 1401a, CETA, 29 U.S.C. § 802, Social Security Act, 42 U.S.C. §§ 415, 1758, 1759a, 2971d).