

# MAINE STATE LEGISLATURE

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

April 7, 1981

Honorable Harold L. Hanson  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Hanson:

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

1. If the Legislature imposes a State excise tax on watercraft, in lieu of the personal property tax, can the excise tax revenue be used as a source of reimbursement for purposes of Article IV, Part 3, Section 23 of the Maine Constitution?
2. May the Legislature delegate to each municipality the power to exempt watercraft from personal property taxation?
3. If such delegation is lawful, would the Legislature be required to reimburse those municipalities who voluntarily exempt watercraft from personal property taxation?
4. If the Legislature exempts watercraft from personal property taxation, is it required to provide reimbursement to those municipalities which, in the previous calendar year, did not tax watercraft?
5. Does the Legislature have the power to grant to the State Tax Assessor alone the authority to determine the value of all watercraft subject to personal property taxation?

STATE EXCISE TAX

Article IV, pt. 3, § 23 of the Maine Constitution provides:

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 underlined language places an affirmative obligation on the Legislature to reimburse all municipalities for certain property tax exemptions by using funds raised from State, not local, tax sources. Since you have proposed a "State excise tax" on watercraft as the source of such reimbursement, we must determine what characteristics that tax must possess in order to be deemed a State tax source. In an opinion dated April 17, 1979, we advised Representative Patrick Jackson as follows:

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 off-set 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 off-set the Legislature's reimbursement obligation.

Thus it is our opinion that an excise tax on watercraft may be used to off-set the Legislature's reimbursement obligation if it possesses the characteristics of a State tax which we have outlined above.

LOCAL OPTION

The second question you posed requires us to determine whether the Legislature may delegate to all municipalities the power to exempt any class of property from personal property taxation. In an opinion dated April 23, 1979, prepared for Representative David Brennerman, we concluded that the Legislature may not delegate that power to municipalities. Our opinion is unchanged.

The leading Maine case on the subject is Brewer Brick Company v. Brewer, 62 Me. 62 (1873). There the Town of Brewer voted to exempt a brick manufacturing company from property taxation for a period of 10 years. The vote of the town was specifically authorized by a statute permitting towns to grant 10-year exemptions to new industries. A year later, the town changed its position and assessed a property tax. The company sued to recover the tax claiming it was entitled to nine more years of exemption. The Law Court declared the exemption statute unconstitutional because it (1) approved taxation for private purposes, and (2) violated the uniformity clause of art. IX, § 8 of the Maine Constitution. Regarding the uniformity clause, the Court's conclusion was predicated on its concern that the statute could result in one town exempting a class of property which would be taxable in other municipalities. Id. 76. As the Court stated:

To have uniformity of taxation, the imposition of, and exemption from taxation, must be by one and the same authority - that of the legislature. It is for the Legislature to determine upon what subject matter taxation shall be imposed; upon land, upon loans, upon stocks, etc., etc.; but the subject matter once fixed, the rule is general, and applies to all property within its provisions. So it may relieve certain species of property from taxation, as the tools of the laborer, the churches of religious societies, etc.; but upon the non-exempted estate the taxation must be uniform as the exemptions are uniform. Id., 74.

Over the years the Law Court has reaffirmed the principle that the Legislature may not delegate to municipalities the power to determine property tax exemptions. Farnsworth Company v. Lisbon, 62 Me. 451 (1873); Portland v. Water Company, 67 Me. 135 (1877); Thorndike v. Camden, 82 Me. 39 (1889); Water Company v. Waterville, 93 Me. 586 (1900); Brownville v. Shank Company, 123 Me. 379 (1924); Town of Milo v. Water Company, 131 Me. 372 (1932); Milo Water Company v. Milo Inhabitants, 133 Me. 4 (1934); In Re Maine Central Railroad Co., 134 Me. 217 (1936); Dolloff v. Gardiner, 148 Me. 176 (1952); Opinion of the Justices, 159 Me. 420 (1963). A consideration of these cases reveals that the Law Court has interpreted the Uniformity Clause to require the establishment of uniform classes of taxable property at the State, county and local level for property tax purposes. The rationale of the Court would appear to be that uniformity will be achieved only if one entity, namely, the Legislature, establishes the class of taxable property. Thus, we are of the opinion that an act delegating the property tax exemption power to municipalities would contravene the Uniformity Clause of art. IX, § 8 because it would allow one municipality to exempt a class of property which is taxable in other municipalities.

We should note, however, that the interpretation adopted by the Law Court applies only to property taxes. The Justices have approved delegation of the exemption power for an excise tax, Opinion of the Justices, 159 Me. 420 (1963), on the ground that the Uniformity Clause does not apply to such taxes. We should also note that in other jurisdictions, courts have upheld the delegation of the exemption power in property tax cases. See, McQuillan, Municipal Corporations, Vol. 16, § 44.64 at 149-150 (3d Ed., 1979 Rev. Vol.); Antieau, Local Government Law, Vol. 2A, § 21.53, at 21-88 to 21-90 (1979). These cases, which represent the majority view of this country, indicate that courts in some other states do not interpret their uniformity clauses in the same manner as the Law Court interprets the Maine Constitution. Given these decisions, we should at least acknowledge the possibility that the Law Court might someday change its position on this question. However, the only conclusion which can reasonably be drawn from the existing Maine case law is that the Legislature lacks the power to delegate to municipalities the property tax exemption power.

#### LOCAL EXEMPTION

If the Law Court were to overturn or distinguish its decisions on the delegation of the exemption power, it is our opinion that the State would not be required to reimburse municipalities which voluntarily exempt watercraft from personal property taxation. We reach this conclusion because art. IV, pt. 3, § 23 requires the Legislature to reimburse municipalities only when the Legislature enacts a property tax exemption or credit. Here, the Legislature would not be exempting specific property, but would simply be authorizing the municipalities to do so. Hence, the decision is local not legislative. We would reiterate, however, that our response to this inquiry is essentially an answer to a hypothetical question, in light of the case law prohibiting the Legislature from delegating to municipalities the power to create property tax exemptions.

#### NONCOLLECTING TOWNS

Your fourth question may be stated as follows: If the Legislature exempts watercraft from personal property taxation, may it withhold reimbursement from those municipalities whose assessors did not assess watercraft the year before the new

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- 1/ If a town voted to exempt watercraft from taxation, its action would insulate watercraft only from the imposition of local property taxes. Unless the Legislature independently acted, such watercraft would remain subject to county property taxes and any applicable district or State property taxes. As a practical matter, this means that a local assessor would continue taxing watercraft for these taxes.



exemption took effect? It is our opinion that the Legislature may not withhold reimbursement from these so-called noncollecting towns.

As we stated earlier in this opinion, the effect of art. IV, pt. 3, § 23 is to impose an ongoing obligation on the Legislature to reimburse municipalities for 50% of the local revenue losses caused by the enactment of new property tax exemptions and credits. Under this scheme, both the revenue loss suffered by the municipality and the resulting obligation on the State to provide reimbursement continue until such time as the Legislature eliminates the exemption. Given the nature of the scheme, we believe it would be unreasonable to conclude that the Legislature intended to disqualify a town from receiving reimbursement payments solely because the assessors of that town failed to assess property taxes on watercraft the year before the exemption took effect.

The legislative history of art. IV, pt. 3, § 23 supports the conclusion that the Legislature did not intend to condition reimbursement on the assessment of watercraft during the tax year before the exemption was enacted. As conceived by the Legislature, the "property tax revenue loss" was equivalent to an erosion of the municipal tax base. The remarks of Senator Merrill are particularly instructive on this point:

I think that it is probably one of the most important steps towards 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 it 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. 241  
(emphasis added)

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2/ Consider the consequences of the opposite interpretation. Town X has assessed watercraft for 25 years. A year before the watercraft exemption takes effect Town X's assessors did not assess watercraft. Thus, Town X is permanently barred from receiving reimbursement. Town Y has not assessed watercraft for 25 of the last 26 years. The one year they did assess watercraft, however, was the year before the exemption took effect. Town Y receives reimbursement. These examples demonstrate the unreasonableness of basing reimbursement eligibility solely on whether the assessors taxed watercraft the year before the exemption took effect.

It is clear that this erosion of the tax base occurs whether or not the municipality assessed watercraft during the year before the exemption took effect.

In light of this background, it is our opinion that the Legislature must reimburse all municipalities which suffer a loss of their tax base by reason of a statutory tax exemption or tax credit enacted by the Legislature. Reimbursement is due regardless of whether a municipality's assessors discharged their constitutional and statutory duty to assess all property liable to taxation in the year preceding the enactment of a new property tax exemption or credit.

VALUATION BY STATE TAX ASSESSOR

Your final question is whether the Legislature has the power to grant to the State Tax Assessor alone the authority to determine the value of all watercraft subject to personal property taxation. It is our opinion that the Legislature does enjoy that power.

It is a fundamental principle that the Legislature may enact any law on any subject unless it is prohibited either in express terms or by necessary implication by the Federal or State Constitutions. See, Ace Tire Co. v. Municipal Officers of Waterville, Me., 302 A.2d 90, 96 (1973). We are aware of no provision in either constitution which would prohibit the Legislature from directing the State Tax Assessor to determine the valuation of all watercraft subject to local, state or county taxation.

We should note that if the Legislature were to enact such a law, it should also consider adopting a new appeals procedure so as to afford local taxpayers a reasonable opportunity to appeal the decision of the State Tax Assessor. At present, determinations made by local assessors are appealed directly to those assessors.

I hope this information is helpful. Please feel free to contact us if we can be of any further service.

Sincerely,

*Stephen L. Diamond*

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