

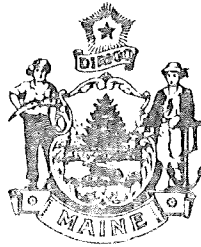
MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 19, 1981

Honorable Thomas M. Teague
Maine Senate
State House
Augusta, Maine 04333

Honorable Bonnie Post
House of Representatives
State House
Augusta, Maine 04333

Dear Senator Teague and Representative Post:

This will respond to your letter of May 13, 1981, in which you request guidance as to which functions of the Land Use Regulation Commission (LURC) may be funded from the proceeds of the Unorganized Territory Educational and Services Tax. See 36 M.R.S.A. §§ 1601-1607.

Although your question is framed in terms of the current statutes, we believe the more critical issue concerns the constitutional limitations on the Legislature's power to impose a property tax. When the problem is viewed in that light, a general answer to your inquiry emerges: the unorganized territory tax may be used to fund those services provided by the State which constitute a special benefit to the unorganized territory, in that the State does not provide the same services to the organized territory. We shall explain and expand upon our answer.

I. General Principles.

Under art. IX, § 8 of the Maine Constitution, "any and all taxes assessed upon real and personal property by the State must be assessed on all of the property in the State on an equal basis." Opinion of the Justices, 146 Me. 239, 248 (1951) (emphasis added.) The exception to this principle which justifies a property tax limited to the unorganized territory lies in the power of the Legislature to create taxing districts. See Crabtree v. Ayer, 122 Me. 18 (1922). These districts are permissible as long as

the taxes assessed on their property result in some special benefit to the district. As explained in Opinion of the Justices, supra, the Constitution does not prohibit "the assessment of special local taxes for special local purposes based upon local benefits."

Two corollaries emerge from the principles set forth above. The first is that the proceeds from the property tax assessed in the district must be expended for undertakings which result in a special benefit to that district. The second is that this benefit cannot be one which is otherwise provided to areas outside the district from the State's general tax revenues.

II. Unorganized Territory Tax District.

In 1978, the Legislature enacted P.L. 1977, c. 698, § 8, creating the Unorganized Territory Tax District, 36 M.R.S.A. § 1601, and requiring that a tax be levied on all of the non-exempt real and personal property in the district, 36 M.R.S.A. § 1602(1). Pursuant to the statutory scheme, the proceeds from the tax are to be used to defray "the cost of funding services in the . . . District which would not be borne by the State if the . . . District were a municipality." 36 M.R.S.A. § 1603. This applies not only to services directly provided by the State but also to services rendered by a county for which the State reimburses the county. 36 M.R.S.A. § 1603(3). As part of the procedure for implementing the scheme, the Legislature makes an annual determination of the "municipal cost component," or the amount needed to fund the services described above, and the State Tax Assessor establishes a mill rate in accordance with this determination. 36 M.R.S.A. § 1603 and § 1602(4).

Prior to its enactment, the statutory scheme described above was the subject of a request to the Supreme Judicial Court for an advisory opinion on its constitutionality. In finding the bill constitutional, the Justices stated,

Legislative Document 2159, if enacted, by providing that the State. . . assess and collect taxes in the district, for use only in the district to provide municipal and educational services, would not violate the provisions of Article IX, section 8 of the Constitution of Maine. Opinion of the Justices, Me., 383 A.2d 648, 652 (1978) (emphasis added).

It is instructive to note that the Justices distinguished the legislation from a prior unorganized territory tax plan which it had found unconstitutional, see Opinion of the Justices, 146 Me. 239 (1951), on the ground that the earlier bill would have required the district to pay for certain educational costs which in organized municipalities were funded from general state taxation.

III. Analysis of LURC Activities.

Having described the unorganized territory tax and the relevant constitutional principles in general terms, we may now turn to the problems raised in your letter. We understand that the Legislature is in the process of determining the municipal cost component for the coming fiscal year, and in that connection, you need to know whether certain activities of LURC may be included in that cost component. These activities appear to fall within three categories: 1) Services which LURC provides in the organized territory; 2) Services which LURC provides in the unorganized territory, but which are provided in the organized territory by other State agencies funded with general tax revenues; and 3) Services which LURC provides in the unorganized territory and which are not provided by the State in the organized territory. We shall examine each of these categories in turn.

1) Services in Organized Areas.

According to your letter, LURC has various regulatory responsibilities with respect to land use in plantations and in other organized areas. It is our opinion that these activities may not constitutionally be funded from the proceeds of a tax levied on property in the unorganized territory.

As explained above, a special local tax is justified only if it is used for special local purposes based upon local benefits. With respect to the activities under consideration here, the constitutional test is not satisfied since the burden is placed entirely on property in the Unorganized Territory Tax District and the services are rendered outside the District. This point is perhaps best understood when one considers that a town is also a taxing district. See Crabtree v. Ayer, supra at 21. Accordingly, if it would be constitutional to require the unorganized territory to underwrite the cost of land use regulation by the State in Maine's plantations, then it would also be constitutional to fund those activities entirely from the local property tax revenues of selected towns. We do not believe either of these alternatives is constitutional.^{1/}

^{1/} Our conclusion would be different only if it could be shown that the unorganized territory receives some special benefit from LURC's activities in the organized areas. Even in that event, the extent to which the unorganized territory tax could be used to fund the activities would have to be commensurate with the special benefit received. See note 4 and accompanying text.

2) Services provided in the unorganized territory which are also provided in organized areas.

Your letter indicates that LURC performs certain functions regarding the issuance of permits in the unorganized territory which are performed in the organized areas by other state agencies presumably funded from general tax revenues. Proceeding from the assumption that LURC's permit activities in the unorganized territory are essentially the same as the permit activities of other state agencies in the organized territory, it is our opinion that these functions may not be paid for from the proceeds of the unorganized territory tax. To do so would be to assess a special local tax without providing a special local benefit, since the same service is already rendered in other areas of the State.

3) Services provided only in the unorganized territory.

These services potentially fall within three different subcategories. While we shall discuss each of these subcategories, we should emphasize that we do so because we have not had the time to become completely familiar with all of LURC's functions. Thus, it is possible that when those functions are scrutinized, one or even two of the subcategories discussed herein will be found to be inapplicable to the activities which LURC actually carries out in the unorganized territory.

a) Services of a municipal character

Those services rendered by LURC in the unorganized territory which in the organized areas are the responsibility of municipal government operating with local property tax revenues present no problem. They satisfy the constitutional test since they constitute a special benefit to the unorganized territory. They may be funded totally from the unorganized territory tax since the benefits are traditionally deemed to be entirely local in nature and since they are locally funded in other areas of the State. Finally, they comply with the relevant statutes since they "would not be borne by the State if the Unorganized Territory Tax District were a municipality." 36 M.R.S.A. § 1603.

b) Services which are not of a municipal character, but which result in a special benefit to the unorganized territory.

Assuming LURC performs services which fall within this subcategory, the question is not whether they may be funded from the unorganized territory tax, but rather what percentage of their cost may be allocated to that tax. By way of further explanation,

local taxing districts differ with respect to the types of benefits they produce. Some benefit only the district itself,^{2/} and in these instances, the entire cost may be imposed on the district. Some yield benefits outside the district, but with the district receiving a greater benefit,^{3/} and in these instances, the greater cost imposed on the district must be reasonably commensurate with the greater benefit it receives.^{4/} Accordingly, the allocation to the unorganized territory tax of the cost of any LURC services which are not municipal in nature, but which result in a special benefit to the unorganized territory, must be made in accordance with the principles recited above.

Services in this subcategory pose another problem insofar as they would probably not be encompassed within the statutory definition of the "municipal cost component." While their inclusion in the component might nonetheless be defensible, on the theory that the Legislature's enactment of the component amends by implication the relevant statutes, express changes in 36 M.R.S.A. c. 115 would eliminate any doubt on this point. Thus, if there are LURC services which fall within this subcategory, 36 M.R.S.A. § 1603 could be amended to expressly enumerate those non-municipal services to be included in the cost component.

c) Services which do not result in a special benefit to the unorganized territory.

As is probably apparent, we do not believe that services in this subcategory may be constitutionally included in the municipal cost component. Even though the locus of the activity may be the unorganized territory, the special property tax levied within the District may not be used to pay for all or part of the activity's cost, if the District does not derive some special benefit.

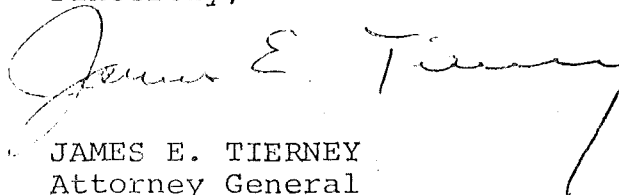
2/ For example, this class would include a district created to provide local fire protection. See Mayo v. Dover & Foxcroft Village Fire Company, 96 Me. 539 (1902).

3/ For example, this class would include a district to acquire a site for a State pier. See Hamilton v. The Portland Pier Site District, 120 Me. 15 (1921).

4/ As stated by the Law Court, a local property tax to be used for local purposes is valid if the tax burden imposed on the district is "in proportion to the benefits conferred upon it." Inhabitants of Sandy River Pl. v. Lewis, 109 Me. 472, 476 (1912). The cases make it clear, however, that the Legislature has considerable discretion in determining how great a burden will be proportionate to the benefits received. See, e.g., Crabtree v. Ayer, supra at 22.

Having set out the legal principles which we think should guide you in determining the municipal cost component, we should offer some final observations about that determination. We recognize that it may not be possible to apportion with mathematical precision the percentage of LURC activities which fall within the various categories outlined in this opinion.^{5/} For that reason, we do not believe it is incumbent upon the Legislature to attempt to devise some exact formula for making the allocation of costs. Rather, as long as the Legislature makes a good-faith effort to arrive at a reasonable apportionment, it is our view that the courts will show considerable deference to its judgment.

Sincerely,



JAMES E. TIERNEY
Attorney General

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^{5/} For example, LURC obviously has general administrative needs which are common to all of its activities.