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May 27, 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 inquiry as to "whether the tax deferral system created by L.D. 1512 is subject to art. IV, prt. 3, § 23 of the Maine Constitution. . . ."

By way of background, L.D. 1512 is entitled AN ACT Concerning Homestead Tax Relief. The bill would allow a person who is 65 or over and who owns and resides in a "homestead"[1/] to become an "eligible claimant" for homestead tax relief upon timely application. The tax levied against an eligible claimant's homestead may not increase above the amount of tax assessed in the year that the local assessor determined that the eligible claimant was indeed eligible.[2/] Although the

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1/ "Homestead" is defined as

> . . . all or part of a building, including a mobile home, used by the occupant as his principal abode, but does not include housing which is not subject to property taxation. Proposed 36 M.R.S.A. § 6192(2).

2/ We note that § 6194 contains a serious drafting deficiency. The express language of the statute states that the claimant's tax may not increase. The statute should provide that the claimant's payment attributable to his homestead need not exceed the amount of tax due on his homestead in the year his application is accepted by the assessor. The distinction between tax and payment is crucial. The statement that the tax is not to increase suggests that the total tax assessed is frozen at the base year level. The language should be changed to make it clear that it is the payment of part of the tax which is deferred.

claimant's tax is thus "frozen," every subsequent year the assessor still determines if the claimant's tax would otherwise have been larger. If it would have been larger, the amount is computed and a lien arises for that amount "to the same extent as if the amount was actually due." Interest accrues on this amount as on any outstanding real estate tax. However, a tax lien does not mature and the taxpayer's right to redeem is not foreclosed while the claimant remains eligible for this relief.

Homestead tax relief is terminated by conveyance of the property to another, except to the claimant's spouse on claimant's death, or by the claimant failing to use the property as a homestead. When relief is terminated, the "outstanding taxes and interest," which were deferred by the freezing of the amount of the payment required each year, become due. The municipality may then resort to the usual enforcement mechanisms, except that the right to redeem under section 943 is only 6 months rather than 18 months.3/ Finally, the bill allows a municipality the local option of deciding whether the relief should be available in the municipality.

Before reaching the reimbursement question that you raise, we must initially address another issue, namely, whether the provisions of L.D. 1512 violate art. IX, § 8 of the Maine Constitution. Section 8 of art. IX provides, in pertinent part,

> All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof.

3/ We note some of the procedures in chapter 105, according to which the municipality is to recover the deferred balance, would be impossible to comply with to recover this balance. For example, section 943 provides that the filing of a tax lien in the registry of deeds creates a tax lien mortgage. However, section 942 provides that a tax collector shall record the tax lien certificate after 30 days, but before 40 days, of giving notice. Notice must be given after 8 months and within one year after the original commitment of a tax. Since the commitment would have occurred years earlier, a tax collector could not comply with these procedures in connection with the deferred amounts.

This clause has been interpreted to require uniformity of property taxation. The Law Court has stated "that all property should be considered and treated for purposes of taxation on an equal basis, and according to just value." Sears Roebuck v. Presque Isle, et al, 150 Me. 181 (1954).

It is apparent from the bill that its provisions do not treat all property taxpayers identically. A certain class of property owners, homestead owners who are 65 or over, is treated uniquely. The amount required to be paid by those property owners is frozen in the year of classification, and any increase in tax that should be assessed to insure the equal assessment requirement by art. IX, § 8 in subsequent years, is uncollectible until the tax relief provided by the bill is terminated. Thus, the class of elderly homestead property owners is able to defer a portion of their property tax for a period of time while they remain owning and living in the property.

When courts have construed tax schemes which freeze the amount of tax to create exemptions, they have held the schemes to be violative of uniformity. In Gottlieb v. Milwaukee, 33 Wisc.2d 408, 147 N.W.2d 633 (1967), the Wisconsin Supreme Court held that a statute which froze the valuation for tax purposes of property owned by an urban redevelopment corporation to the assessed valuation just prior to the acquisition by the redevelopment corporation violated the Wisconsin Uniformity Clause. The court analyzed this scheme to be a partial exemption, since redevelopment corporation taxpayers would be relieved of any increment of value as a result of improvements or building. Under the Wisconsin court's interpretation of its uniformity clause, any partial exemption is violative of uniformity. See also Opinion of the Justices, 332 Mass. 769, 126 N.E.2d 795 (1955).

If the relief provided by L.D. 1512 were determined to be tantamount to an exemption, then we believe it would conflict with art. IX, § 8. While elderly taxpayers may well constitute a proper class for a property tax exemption, such an exemption would have to be uniform within the class. Without going into detail, we do not think the provisions of L.D. 1512 would satisfy this requirement, if the bill were found to establish an exemption.

Although there is no case law dealing with a tax scheme similar to the novel approach contained in L.D. 1512, there are certain features of the proposed relief which we believe make it distinguishable from an exemption. The effect of the tax relief is not the same as an exemption. The tax on the property, assessed and apportioned according to just value

and thus calculated like the taxes on all other taxable property in Maine, is eventually to be paid. The same is true for the interest, which would be calculated at the rate otherwise imposed on delinquent taxes. Thus, unlike an exemption, in which property taxes need never be paid, the relief here is merely the deferral of the payment of part of the taxes. Although homestead tax relief and exemptions may cause a similar shift, at least initially, in the burden of taxation because of the potentially lengthy deferral of payment of taxes, we believe that the conclusion that elderly homestead tax relief is not an exemption is legally defensible.

We also conclude that the proposed deferral of payment of taxes is not violative of uniformity. Art. IX, § 8 merely provides that all taxes upon real and personal estate "shall be apportioned and assessed equally according to the just value thereof." The property taxes of the eligible claimants under homestead tax relief are so apportioned and assessed. What the elderly taxpayer is given is the right to defer payment of part of the justly apportioned and assessed tax because the usual collection and enforcement mechanisms are not utilized against him or her.

Cooley, in his treatise on taxation, concluded that:

> [t]he constitutional rule as to uniformity does not apply to provisions relating to the collection and enforcement of the tax. Cooley, Taxation, § 308 (1924).

This view was followed in State ex rel. Hammerhill Paper Co. v. Laplante, 58 Wisc.2d 32, 205 N.W.2d 784 (1973). Tax liens were not imposed on delinquent "industrial project" property taxpayers, while they were imposed on other property taxpayers. The Wisconsin Court held that this was not violative of the uniformity clause. It is our opinion that the proposed scheme may be legitimately viewed as a deferral of payment and postponement of collection and enforcement mechanisms, and when so viewed, it does not violate art. IX, § 8.4/

4/ Because we have concluded that elderly homestead relief does not create an exemption, and further that the uniformity clause does not apply to the deferral relief, the local option provision of the bill does not create a constitutional problem similar to the one in Brewer Brick Co. v. Brewer, 62 Me. 62 (1873). In Brewer Brick, the Law Court held that the Legislature may not delegate to municipalities the power to determine property tax exemptions. The differing exemptions from municipality to municipality would violate art. IX, § 8 of the Constitution. Since the deferral relief is not governed by the uniformity clause, the delegation of the power to grant that relief does not violate the Constitution.

Since homestead tax relief creats different treatment between classes of taxpayers, the question may arise as to whether it is invalid on equal protection grounds. We do not believe this to be the case. Here there are valid reasons for discrimination among classes of taxpayers. It is rational for the Legislature to determine that elderly homestead owners are in need of deferral of property tax increases to prevent the loss of their homes by reason of tax increases beyond their means. Furthermore, the Legislature could determine that elderly homestead owners are in greater need of this relief than other property owners. Like veterans, the Legislature could exempt elderly homestead owners from property taxation. Since the Legislature would be competent to exempt elderly homestead owners, then certainly it must also be competent to defer part of their taxes.

Finally, arriving at the question you ask in your letter, we conclude that L.D. 1512 does not require reimbursement to the municipalities. Art. IV, prt. 3, § 23 of the Maine Constitution requires the Legislature to reimburse municipalities for 50% of the property tax revenue lost as a result of property tax exemptions or credits enacted by the Legislature after April 1, 1978. We do not believe this provision would apply to L.D. 1512, if that bill were enacted. Although a municipality would indeed suffer a loss of property tax revenue during some years because of tax deferral, the loss of revenue would not be the result of an exemption or credit. As stated earlier, the deferral of taxes does not creat an exemption. The municipality would eventually become entitled to the full property tax liability, plus interest at the rate that is charged on all delinquent property taxes. Neither can the deferral be characterized as a credit. Reimbursement is therefore not required.

Even if a court were inclined to view the proposed relief as an "exemption" or "credit" for purposes of art. IX, pt. 3, § 23,[5/] it is our view that the State would still not be required to reimburse municipalities because of the local option provision. Reimbursement is mandated only when the Legislature enacts a property tax exemption or credit. In this instance, the exemption or credit would be enacted locally not legislatively. The

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5/ Since there are no cases interpreting the reimbursement requirement, we cannot eliminate the possibility that a court would give the provision a very broad reading and thus find the proposed relief to constitute an "exemption" for purposes of art. IV, pt. 3, § 23, but not for purposes of art. IX, § 8.

Legislature would merely be authorizing the locality to enact an exemption or credit. See Opinion of the Attorney General, April 7, 1981. (Letter to Rep. Hanson).6/

To summarize, L.D. 1512 proposes an approach to property tax relief which has never been considered by the Maine courts. The absence of relevant precedent makes it impossible for us to predict with total confidence how the courts would treat the proposed scheme. Subject to that qualification, however, it is our opinion that the scheme, if enacted, would be constitutional and would not require that the State reimburse those municipalities which choose to make it available to their elderly taxpayers.

I trust this answers your question. Please feel free to contact us if we may be of further assistance.

Sincerely,

JAMES E. TIERNEY
Attorney General

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6/ We note that L.D. 1512 does not contain a provision to make the relief available in the unorganized territory. We assume this omission was the result of an oversight. Similarly, there is no indication in the bill as to its applicability to school district and county taxes, a point which might merit clarification.