

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)

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

June 1, 1982

Honorable Joseph E. Brennan
Governor, State of Maine
State House
Augusta, Maine 04333

Dear Governor Brennan:

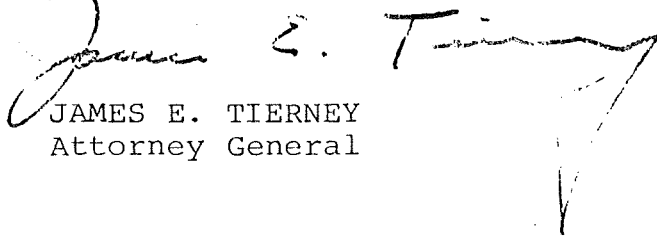
As you are aware, the recent decision of the Maine Supreme Judicial Court in Boston Milk Producers, Inc., et al. v. J. L. Halperin, et al. (Slip Opinion 2954) invalidated 36 M.R.S.A. §4505, a 1979 increase in the "milk tax," because the producer referendum required by P.L. 1979, c. 452, §9, to institute it was found to constitute an unconstitutional surrender of the Legislature's power of taxation in violation of Article IX, Section 9 of the Maine Constitution. The Court held that the determination of what money shall be raised by taxation is a process which, under the Maine Constitution, rests exclusively with the Legislature and may not be undertaken even by those who ultimately bear the resulting burden.

I bring this case to your attention particularly because of the implications it raises concerning P.L. 1981, c. 312, "An Act to Require that Industry Wide Taxes be Levied Only After Referendum Approval of the Persons Who Would be Required to Pay the Tax." That Act, codified at 36 M.R.S.A. §§31-35 and in effect since September 18, 1981, provides that before any "special industry tax" is increased, those required to pay the tax must give their assent in a referendum conducted by the State Tax Assessor. Since this procedure is identical with that invalidated by the Court in Boston Milk Producers, Inc. it is

clearly unconstitutional. Consequently, I would suggest that legislation be initiated at the next session of the Legislature to repeal 36 M.R.S.A. §§31-35, and thereby remove from private individuals the authority to implement or reject increases in special tax liability.

Should you have any questions on this matter, please contact me so we may discuss it at greater length.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is written in a cursive style with a large initial "J".

JAMES E. TIERNEY
Attorney General

JET/kc

cc: Legislative Council
Stuart Smith, Commissioner of Agriculture
Spencer Apollonio, Commissioner of Marine Resources