

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
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June 25, 1982

Honorable James A. McBreairty
Perham
RFD #1
Caribou, Maine 04736

Dear Senator McBreairty:

You have sought our advice concerning two questions posed to you by the Franklin County Commissioners. The Commissioners have asked (1) what are the permissible purposes for which countywide funds may be used in the unorganized territories in view of the limiting language on such expenditures contained in 30 M.R.S.A. § 403-A, and (2) what is the effect of the Unorganized Territory Educational and Services Tax, 36 M.R.S.A. § 160 et seq., enacted by the Legislature in 1978, on the provisions of 23 M.R.S.A. § 4051 relating to the raising of county funds for road repair and maintenance in the unorganized territory.

For the reasons which follow, it is our opinion that (1) the limiting language contained in 30 M.R.S.A. § 403-A relates only to services of a municipal, and not county, nature; and (2) that in enacting the Unorganized Territory Educational and Services Tax, the Legislature impliedly repealed certain provisions of the road repair and maintenance tax contained in 23 M.R.S.A. § 4051.

I. Use of Countywide Funds in the Unorganized Territory

The last sentence of 30 M.R.S.A. § 403-A, enacted in 1981, P.L. 1981, c. 406, § 2, provides:

No countywide funds, nor return on investment of countywide funds, may be used for the unorganized territories.

The legislative history of this provision is silent as to the types of expenditures to which it is intended to apply.

Nonetheless, it is our opinion that when viewed in the context of the entire section of which it is a part,^{1/} this sentence should be read to mean that the Legislature intended that no countywide funds, nor return on investment of countywide funds, may be used for the services of a municipal nature which the county renders in the unorganized territories. The first sentence of Section 403-A requires that funds which the county is "required . . . [to spend] . . . for the unorganized territories" be accounted for separately from the funds held for countywide activities. The second and third sentences allow the commingling of unorganized territory funds and countywide funds, as long as any return on investment of these commingled funds is prorated between unorganized territory funds and countywide funds. The fourth sentence mandates that the return on investment of unorganized territory funds be used only for the unorganized territories.

It is therefore clear that the overall objective of Section 403-A is to ensure that the two types of funds which a county might possess - those which it is "required to spend for the unorganized territories" and those which are used for the usual county services - are spent only for the purposes for which they were raised. In keeping with this objective, the last sentence must be read to prohibit the expenditure of countywide funds, which are raised principally from the county tax, only

^{1/} 30 M.R.S.A. Section 403-A reads in its entirety as follows:

Any funds required to be spent for the unorganized territories held by a county shall be accounted for separately from the funds raised for countywide activities. This separate accounting shall not prohibit the commingling of unorganized territory and countywide funds. The return on investment of county funds shall be prorated between the amounts invested of unorganized territory funds and the amounts invested of countywide funds. The return on investment of unorganized territory funds shall only be used for the unorganized territories. No countywide funds, nor return on investment of countywide funds, may be used for the unorganized territories.

on services of a municipal^{2/} nature which a county may be required to make in the unorganized territory. The prohibition should not therefore be read to extend to services which a county is required by law to render in the unorganized territory. See 36 M.R.S.A. § 1601 et seq.; see also Opinion of the Attorney General, May 19, 1981 (letter to Senator Teague and Representative Post). Indeed, to read the prohibition as extending to county services would almost certainly lead to an unconstitutional result since it would mean that the counties would be taxing the unorganized territories for the cost of services which those territories were prohibited from receiving. See Article IX, Section 8 of the Maine Constitution and Opinion of the Justices, 383 A.2d 648 (Me. 1978).

II. Effect of Unorganized Territory Educational and Services Tax on County Road Repair and Maintenance Tax.

In 1868, the Legislature enacted a comprehensive statute governing the construction and maintenance of roads in the unorganized territories, P.L. 1868, c. 191, Section 6 of which provided a mechanism whereby the county commissioners were to estimate the amount needed for maintenance of such roads and assess each unorganized township for these expenses. After frequent amendment over the succeeding century, the last of which occurred in 1957, P.L. 1957, c. 227, this provision now appears at 23 M.R.S.A. § 4051, where it is set forth that the assessment shall not exceed 3% of the last state valuation of the township, and if such is insufficient, the balance of the amount needed is assessed on the county.

In 1978, however, the Legislature enacted a new comprehensive method by which funds are to be raised to pay for municipal-type services in the unorganized territory, including road services. P.L. 1977, c. 698, enacting 36 M.R.S.A. § 1601 et seq. This new scheme provides for a tax, known as the Unorganized Territory Educational and Services Tax, to be

^{2/} That the phrase in Section 403-A, "funds required to be spent on the unorganized territories," refers to funds for services of a municipal nature is further demonstrated by Section 1 of P.L. 1981, c. 406. Section 1 enacted 30 M.R.S.A. § 252, 5th para., which requires that county commissioners show the county legislative delegation any assessment for services for which the county will seek state reimbursement under 36 M.R.S.A. Section 1603(1)(c). Section 1604(1)(c) is, of course, within the unorganized territory educational and services tax law and authorizes state reimbursement for municipal-type services rendered by a county to the unorganized territory.

imposed upon real and personal property located in the unorganized territory at a rate calculated to raise the "municipal cost component amount." The municipal cost component amount is the cost of funding services in the organized territory "which would not be borne by the State if the [unorganized territory] were a municipality." *36 M.R.S.A. § 1603(1). This component includes, but is not limited to, the cost of education, the cost of services that the state funds which are paid for by a municipality in the organized areas of the State, and:

The cost of reimbursement by the State for services a county provides to the unorganized territory in accordance with Title 23, Part 4 and Title 30, chapter 5. 36 M.R.S.A. sec. 1603(1)(C).

Section 4051 is within Part 4 of Title 23.

A comparison of the road maintenance tax contained in 23 M.R.S.A. § 4051 and the unorganized Territory Educational and Services Tax shows them to be inconsistent. The method of assessing each township separately and limiting each township's assessment to 3% of its state valuation provided in Section 4051 is incompatible with the method of treating all of the unorganized territory as one taxing district set forth in 36 M.R.S.A. § 1602. In this latter section, the tax which is currently assessed upon each owner of property within the unorganized territory is imposed at a mill rate uniformly applied throughout the entire unorganized territory, and thus is designed to raise the revenue necessary for, among other things, road expenses in all townships of the unorganized territory. However, 23 M.R.S.A. § 4051 was created to operate under the system whereby each unorganized township was treated as a separate taxing district. Under this prior taxing scheme, each township had a separate mill rate, and that rate was calculated to raise the revenue necessary to pay for road expenses in that particular township. See 36 M.R.S.A. §§ 451 and 1141 (now repealed). Under 36 M.R.S.A. § 1602, the tax imposed on each individual taxpayer in a particular township may reflect a mill rate that will produce revenue greater or smaller than the funds for road repair actually needed in that township.^{3/}

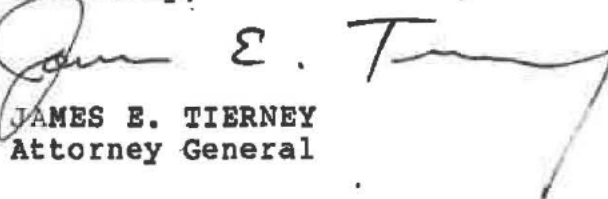
^{3/} There are additional inconsistencies between 23 M.R.S.A. § 4051 and 36 M.R.S.A. § 1602. For instance, Section 4051 requires the State Tax Assessor to determine the amount of tax due from each owner of property in the unorganized territory, pursuant to 36 M.R.S.A. § 1142, and assess the tax due pursuant to § 1145. However, P.L. 1979, c. 666, § 26 repealed these sections of Title 36.

In addition, the newly enacted 30 M.R.S.A. § 403-A, discussed in Part I of this opinion, is also inconsistent with 23 M.R.S.A. § 4051. Section 4051 allows the assessment upon the county for road expenses greater than 3% of the valuation of an unorganized township. Section 403-A clearly states, however, that no countywide funds may be used for the unorganized territories. Since an assessment upon a county, of course, produces countywide funds, the two provisions are incompatible with one another.

A fundamental principle of statutory construction is that when two statutes are inconsistent and irreconcilable, the more recent legislation controls and is said to impliedly repeal the older enactment. See State v. Taplin, 247 A.2d 919 (Me. 1968). It is true that "repeals by implication are not favored and the Legislature will not be presumed to have intended a repeal." Small v. Gartley, 363 A.2d 724, 729 (Me. 1976). See also Blaney v. Rittal, 312 A.2d 522, 527-29 (Me. 1973). However, when a later enactment "cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails." 1A Sutherland, Statutory Construction § 23.09 (4th ed. 1972). By enacting the Unorganized Territory Educational and Services Tax which treats the unorganized territory as one taxing district, as well as 30 M.R.S.A. § 403-A, which prohibits the use of countywide funds to meet any municipal-type expense in an unorganized township, the Legislature created a taxing scheme which is inconsistent with the provisions of 23 M.R.S.A. § 4051 that authorized the county commissioners to separately assess each unorganized township up to 3% of the township's state valuation for road expenses, and authorized the assessment of the county for road expenses greater than the 3% limit. The earlier scheme must therefore be viewed as impliedly repealed.

I hope this answers your questions. Please feel free to reinquire if further clarification is necessary. I enclose three copies in the event you wish to distribute them to the county commissioners.

Sincerely,


JAMES E. TIERNEY
Attorney General

JET/d