

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



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

December 3, 1982

The Honorable Joseph E. Brennan  
Governor, State of Maine  
State House, Station #1  
Augusta, Maine 04333

Dear Governor Brennan:

On July 21, 1982, you asked for the opinion of my office on several questions regarding the new Mining Excise Tax Act, passed at the last session of the Legislature. P.L. 1981, c. 711. On August 9, 1982, we answered two questions concerning the constitutionality of proposed amendments to the Act. This will respond to your remaining questions, which involve interpretations of the existing law. These questions are:

1. Extracted minerals are exempted from property taxation as 'mining property', as defined in 36 M.R.S.A. § 2855 (P.L. 1981, c. 711). Are extracted minerals also exempt under 36 M.R.S.A. § 655 or any other section, with the result that the State is not required under Article IV, Part 3, Sec. 23 of the Constitution to reimburse municipalities for the exemption of extracted minerals?
2. When calculating the 'property tax lost' for municipal reimbursement under Article IV - as is done, for example, in 36 M.R.S.A. § 2861(3)(E) - may the State take into consideration the amount the municipality gains from other state sources because of the reduced state valuation resulting from the exemption?

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For the reasons which follow, it is our opinion that (1) municipal reimbursement, pursuant to Article IV, Part 3, Section 23 of the Maine Constitution, is required only for real estate tax revenues lost ten years after the opening of a mine, and (2) in making calculations for municipal reimbursement, the State may not consider any increase in funds which a municipality may experience as a result of a decrease in valuation resulting from a legislatively-created property tax exemption.

#### I. Degree of Municipal Reimbursement Required

Article IV, Part 3, Section 23 of the Maine Constitution requires reimbursement to each municipality for "50% of the property tax revenue loss suffered" because of property tax exemptions enacted after April 1, 1978. Maine law requires the taxation of real and personal property. 36 M.R.S.A. § 502. Certain exemptions from each of these taxes are provided at 36 M.R.S.A. § 656 and 655, respectively. The Mining Excise Tax Act exempted all "naturally occurring metallic minerals" from real estate taxation, P.L. 1981, c. 711, § 8, amending 36 M.R.S.A. § 656(1)(B), but did not make any amendment of the section of the tax laws governing exemptions from taxation, 36 M.R.S.A. § 655. Your question as to the degree of municipal reimbursement under the constitutional provision required by the Act's passage is thus twofold: (a) to what degree does the exemption of all "naturally occurring metallic minerals" from real estate taxation require municipal reimbursement and (b) to what extent is mining related personal property exempt from personal property taxation at all?

#### A. Exemption from Real Estate Taxation

Prior to the enactment of the Mining Tax Excise Act, Section 656(1)(B) of Title 36, which predated April 1, 1978, contained the following exemption from real estate taxation:

Mines of gold, silver or baser metals, when opened and in the process of development are exempt from taxation for 10 years from the time of such opening. This exemption does not apply to the taxation of the lands or the surface improvements of such mines."

As indicated above, this provision was repealed in the Mining Excise Tax Act and replaced with one exempting simply "naturally

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occurring metallic minerals." The questions thus arise as to whether the new exemption so expands the old exemption as to require municipal reimbursement under the Constitutional provision, and, since the old exemption was limited to ten years after the "opening" of a mine, when such reimbursement should commence.

As to the respective scopes of the two exemptions, it appears to us that the new exemption should not be read to increase the range of property exempted. The old exemption expressly did not apply "to the taxation of the lands on the surface improvements of such mines," and was thus limited to the value of the minerals themselves. The new exemption, however, contains no such limitation. Nonetheless, we are not inclined to read any intention on the part of the Legislature to exempt "lands" and "surface improvements" for the first time, in view of the following explanation of the new exemption contained in the Statement of Fact of the Legislative Document which became the Mining Excise Tax Act, 110th Maine Legislature, Legislative Document 2155 (1982):

"[The new exemption] establish[es] a property tax exemption effective March 1, 1983 for minerals. This is an expansion of the current exemption for minerals which is for 10 years after the opening of a mine. This broader exemption establishes that the just value of the real estate shall be determined without regard to the presence of minerals." (Emphasis added)

It seems clear, therefore, that the Legislature regarded the scope of the two exemptions, old and new, to be coextensive - limited to minerals only - and that the new exemption was broader only in the sense that it was not limited to ten years after the opening of a mine.

This brings us to the second question concerning the real estate exemption: since the new exemption is expanding the old by making a ten year exemption permanent, when must the municipal reimbursement required by the Constitution begin? It seems to us quite clear that such reimbursement is required only after the expiration of ten years following the opening of a mine, since under the law prevailing on April 1, 1978, minerals were exempted from real estate taxation for such a period. Thus,

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the complex provisions of 36 M.R.S.A. § 2861, through which the Mining Excise Tax Act sets forth how the amount of reimbursement is to be calculated, would not be invoked for purposes of real estate taxation reimbursement until that time.<sup>1/</sup>

B. Exemption from Personal Property Taxation

As indicated above, the Mining Excise Tax Act did not amend 36 M.R.S.A. § 655, the provisions of the tax laws governing exemptions from personal property taxation. However, since 1973, the following has been exempted by 36 M.R.S.A. § 655(1)(A) from the personal property tax:

"Industrial inventories including raw materials, goods in process and finished work on hand." (Emphasis added).

Minerals, once they are extracted from the grounds, are considered to be personal property. Cooley, The Law of Taxation, § 564 (1924). It thus seems clear that extracted minerals located at a mine site and awaiting shipment were exempt from personal property taxation prior to the passage of the Mining Excise Tax Act.

This interpretation is consistent with the legislative history of the Act. The introductory section of the Statement of Fact of L.D. 2155, cited above, states:

"This excise tax is in lieu of property taxes on the mineral deposit and on the mining facilities and equipment." (Emphasis added).

It does not appear, therefore, that the Legislature intended any different treatment of minerals for purposes of real and personal property taxation. It may thus be safely inferred that in taking no affirmative action in the Act with regard to the status of the taxation of minerals as personal property, the Legislature simply assumed that minerals were already so exempted.

<sup>1/</sup> Our opinion on this point is not altered by the fact that the Legislature chose to delay the effectiveness of the new exemption until March 1, 1983. The ten year period in the old exemption ran from the opening of the mine, not from the effective date of the statute enacting it.

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The consequence of this conclusion for municipal reimbursement is thus clear. Since extracted minerals were already exempt from personal property taxation on April 1, 1978, no reimbursement for any municipal personal property revenue lost as a result of this exemption is required.

## II. Calculation of Municipal Reimbursement

Several existing state programs, most notably in the field of education, provide for the subsidization of municipal revenues in amounts which are calculated as a function of each municipality's equalized taxable valuation, otherwise known as state valuation.<sup>2/</sup> Whenever such valuation is reduced, because, for example, of a newly created tax exemption, a municipality's state subsidy will rise. Consequently, you have asked whether any increase in state subsidy which a municipality experiences as a result of a tax exemption contained in the Mining Excise Tax Act (or any other law, for that matter) may be deducted from the "tax revenue loss," to use the terms of the Constitution, in calculating the municipal reimbursement required by Article IV, Part 3, Section 23 of the Maine Constitution.

It is our opinion that they may not. This is because the increase in subsidy is already taken in account when the reimbursement calculation, whether made pursuant to 36 M.R.S.A. § 2861<sup>3/</sup> or in any other manner, is made. When a property tax

<sup>2/</sup> 36 M.R.S.A. § 305 imposes a duty upon the Bureau of Taxation to insure that the valuation of all real and personal property in each municipality is equalized.

<sup>3/</sup> It should be noted that Subsection (3)(E) of Section 2861 provides:

The State Tax Assessor shall reduce the amount [of municipal reimbursement for tax revenue loss] to reflect the additional school support provided by the State because of the change in valuation [occasioned by the passage of the Mining Excise Tax Act], which figure shall be the actual tax revenue loss.

For the reasons set forth in the body of this opinion, it should be clear that it would be unconstitutional for this reduction to be made, since it would prevent an affected municipality from receiving the full 50 percent reimbursement to which it is constitutionally entitled. Thus, in our opinion, subsection (3)(E) is unconstitutional.

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exemption is enacted, a municipality does not suffer a revenue loss, since it will simply increase its mill rate to bring in the necessary revenue to pay for municipal expenses. It does, however, suffer a loss of taxable valuation, meaning that there is less taxable property over which to spread the revenue needed to be raised. However, before the mill rate is raised, the municipality will be entitled to any increase in its state subsidies which result from its lowered valuation. Thus, the amount by which it must raise the mill rate (to recover the "tax revenue loss" occasioned by the new tax exemption) will already reflect the amount of increased state subsidy which its reduced valuation will produce.

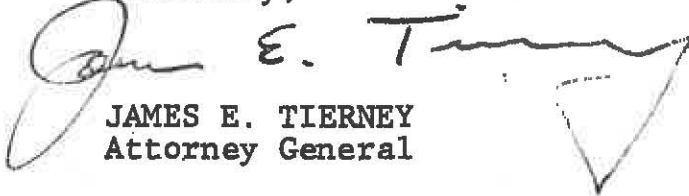
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I hope this answers your questions. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY  
Attorney General

JET/d

cc: Honorable Gerard P. Conley  
Honorable John L. Martin  
Richard E. Barringer, State Planning Office