

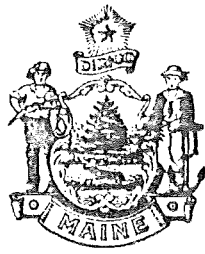
MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 8, 1982

Fred E. Holt, Chairman
Maine Forest Fire Control Study Commission
c/o Julie Jones
Office of Legislative Assistants
Station #13, Room #101
State House
Augusta, Maine 04333

Dear Chairman Holt:

You have inquired whether the Maine Forestry District ("MFD") tax violates the Maine Constitution. In particular, you ask whether that tax violates Article IX, Section 8 of the Maine Constitution, which requires generally that all property taxes be assessed equally. Our response is that, while it is possible that the tax might be found to violate Article IX, Section 8, we are unable to answer conclusively, since to do so would require the resolution of a number of factual questions, which are beyond the scope of your inquiry.

The Maine Forestry District is an administrative district whose boundaries are established by statute and are generally coextensive with the unorganized territory of the State. 12 M.R.S.A. § 1201.^{1/} It is established for the purposes of the "prevention, control and extinguishment of forest fires"

^{1/} Portions of the unorganized territory not included within the MFD may be added thereto by the State Tax Assessor, with the approval of the Director of the Bureau of Forestry and the Attorney General. Municipalities adjoining any part of the MFD may, by town vote, become a part of the MFD. 12 M.R.S.A. §§ 1201, 1202.

within its borders, and the responsibility for such is vested in the Director of the Bureau of Forestry ("the Director"). 12 M.R.S.A. § 1203. In order to raise revenues to meet the total costs of the MFD, the Department of Conservation is directed by the Legislature to make annual estimates thereof, and the Legislature then imposes a tax (the "MFD tax") on all taxable land in the MFD for the years in question. 12 M.R.S.A. § 1601. The revenues from the MFD tax are to be "used to protect from fire the forests situated in the [MFD], and to pay expenses incidental thereto, . . . and for no other purpose." 12 M.R.S.A. § 1607.

Article IX, Section 8 of the Maine Constitution provides that:

"All taxes upon real. . . estate, assessed by authority of this State, shall be apportioned and assessed equally. . . ."

However, the Supreme Judicial Court of Maine has held that this provision does not prevent the Maine Legislature from creating special taxing districts for special public benefits to be conferred thereon. Inhabitants of Town of Stonington v. Inhabitants of Town of Deer Isle, 403 A.2d 1181, 1184 (Me. 1979). However, taxation for special purposes by assessment on the property benefitted must be in proportion to the benefits conferred. When the benefits and burdens are not reasonably proportional, the tax is unconstitutional, id.; Smyth v. Titcomb, 31 Me. 272 (1850), although it is not required that the tax "be exactly proportionate to benefits." Crabtree v. Ayer, 122 Me. 18, 22 (1922). Thus for the MFD tax to be constitutional, the taxpayers of the District must receive a special benefit and the amount of tax must not be disproportionate to the value of that benefit.

In 1912, the Supreme Judicial Court passed upon the constitutionality of the original MFD tax. The Court found that:

"Land within the [Maine forest] district had special benefits that no other forest lands in the State had, and it ought to bear the burdens caused by the receipt of those special benefits." Inhabitants of Sandy River Plantation v. Lewis, 109 Me. 472, 477 (1912).

Thus, in Sandy River the special tax was held to be constitutional. Since 1912, however, the forest fire protection system of the State has changed both statutorily and in its administration.

The major change in the State's forest fire protection system is that now the Maine Forest Service, supported by the general fund, provides substantial services both outside and inside of the MFD. Within the MFD, the Director remains solely responsible for "prevention, control and extinguishment of forest fires," 12 M.R.S.A. § 1203, and any shortfall in the payment of those costs from the MFD fund may be made up from the general fund. 12 M.R.S.A. § 1607. But outside the district, although town forest wardens are responsible "in the first instance" for control of forest fires, the Forest Service is now ultimately responsible for their control. 12 M.R.S.A. § 9201. The question is thus raised as to whether the provision of basic forest fire protection within the MFD retains its character as a special benefit.

In our opinion, it does not. Since forest fire protection is now provided from the general fund outside of the MFD, and would be available inside the MFD if the MFD did not exist, it can no longer be considered a special benefit.^{2/} See Op. Me. Att'y Gen. No. 81-50 (Unorganized Territory Educational and Services Tax cannot be used to fund services that are available outside of the unorganized territory). Nonetheless, it may still be possible that the tax would survive constitutional scrutiny if other special benefits can be found whose value is proportionate to the amount of the tax.

Without professing to be exclusive, and without offering any opinion as to their respective values, we would call your Commission's attention to the following benefits which appear to be available to MFD taxpayers:

1. "First instance" response and initial costs. As indicated above, towns outside the MFD are responsible for responding to forest fires "in the first instance." 12 M.R.S.A. § 9201. Within the MFD, the Forest Service provides such response. Moreover, outside the MFD, towns are authorized to absorb the initial annual cost of forest fire protection, up to one-half percent of their state valuation. 12 M.R.S.A. § 9204. Inside the MFD, there is no such requirement. Thus, a special benefit of some value is conferred on MFD taxpayers with regard to the initial costs of forest fire protection.

^{2/} According to the Maine Forest Service, two-thirds of the forest fire protection costs are paid by the MFD tax and one-third is paid from the general fund. In addition, it has been represented to this Office that these monies are put in a single account from which all forest fire costs and reimbursements are withdrawn. It should be noted that this appears to be a clear violation of the statutory mandate that the MFD tax shall be kept in a separate account as a fund to be used to protect from fire the forests within the MFD.

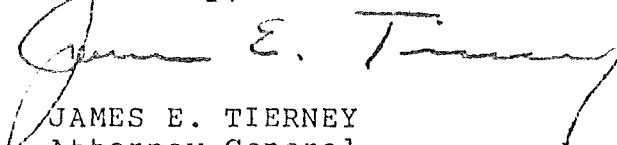
2. Equipment. Non-MFD towns are responsible by statute to maintain their own forest fire fighting equipment, and the loss thereof is not reimbursable from the general fund. 12 M.R.S.A. § 9204. Such losses within the MFD are reimbursable from the MFD fund. 12 M.R.S.A. § 1607.

3. Costs of non-forest fire control. Inside the MFD, a member municipality is made eligible for annual reimbursement, up to 50% of its contribution to the MFD for that year, for "fire protection," which is not limited to forest fires. 12 M.R.S.A. § 1601-A. Such reimbursement may not be had outside of the MFD. Thus, the MFD tax provides an additional special benefit to taxpayers of its member municipalities not available outside of its borders.

* * *

In summary, then, a determination of the constitutionality of the Maine Forest District tax turns on the resolution of the factual questions. In the absence of a complete factual record, however, we cannot respond in any way other than to enumerate the factors which a court would consider in scrutinizing the tax. We hope, however, that the foregoing is of some assistance.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/d