

MAINE STATE LEGISLATURE

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ATTORNEY GENERAL

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

June 2, 1983

Senator R. Donald Twitchell
Representative Edward A. McHenry
Chairmen, Joint Standing Committee on
Local and County Government
Maine Legislature
State House
Augusta, Maine 04333

Dear Senator Twitchell and Representative McHenry:

You have requested an Opinion of this Department on the constitutionality of Legislative Document No. 1710 (111th Legis. 1983), a new draft of Legislative Document No. 1344 (111th Legis. 1983), "AN ACT to Establish County Budget Committees." Your questions focus on the selection procedure proposed for the county budget committees which would be established by the bill. The issues raised are whether this procedure violates the so-called "one person, one vote" principle required by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. You further inquire whether the limitation on the membership of the budget committees to municipal and so-called unorganized territory officers violates the Fourteenth Amendment to the United States Constitution. This Office answers both questions in the negative.

L.D. 1710 would create a new procedure for the establishment of county budgets. Currently, county budgets are approved by the Legislature based on estimates made by the county commissioners. See 30 M.R.S.A. §§ 252-53. The county tax is then assessed based on this budget. 30 M.R.S.A. § 254. L.D. 1710 creates budget committees for each county which will take the place of the Legislature in this process.

Each budget committee is to have nine members, three from each of the current county commissioner districts. The members of the committee will be selected by the municipal officers and by so-called "unorganized territory officers" by the following procedure. First, the legal voters of all unorganized territory within the county will caucus, by commissioner district, and elect three "unorganized territory officers" for each district which contains unorganized territory. These officers will then caucus with the officers of the municipalities ^{1/} within each district for the purpose of nominating at least three municipal officers as candidates for the committee. These nominations will then be placed on a written ballot, and the municipal officers of each municipality will vote, as a board, for three members to represent their commissioner district. This vote will be weighted on the basis of the municipality's population as a proportion of the district's population.

The first question presented is whether this selection procedure violates the constitutional principle of "one person, one vote." This Office concludes that it does not because it is not a procedure to which the guarantees of the Equal Protection Clause of the Fourteenth Amendment apply. In Sailors v. Bd. of Education of the County of Kent, 387 U.S. 105 (1966), the United States Supreme Court was presented with an issue very similar to the question you pose. In Michigan, county school boards were chosen by delegates from local school boards, and votes of the delegation were not weighted based on the population of the locality. 387 U.S. at 106. Ruling on an Equal Protection challenge to this procedure, the Court held that this selection procedure was "basically appointive rather than elective." Id. at 109. As the Court noted, "[t]he 'electorate' under the Michigan system is composed not of the people of the county, but the delegates from the local school boards." Id. at 110, n. 6. Since the challenged procedure "did not involve an election," id. at 111, it was not subject

^{1/} For purposes of selection of budget committee members, municipal officers include "the mayor or alderman or councillors of a city, the selectmen or councillors of a town and the assessors of a plantation." 30 M.R.S.A. § 1402, as proposed by L.D. 1710, § 8. The "unorganized territory officers" are to participate in the selection procedure "as if they were municipal officers." Id. at § 1403(1)(C).

to the "one person, one vote" principle.^{2/} The selection process established by L.D. 1710 is essentially similar to that under review in Sailors. Thus, it is not an election and not subject to the "one person, one vote" requirement.^{3/}

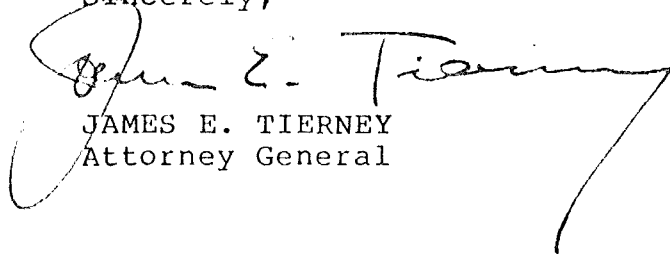
Your second question is whether L.D. 1710's limitation on eligibility for county budget committee membership to municipal and unorganized territory officers violates the Fourteenth Amendment to the United States Constitution. It must be concluded that this part of L.D. 1710 is not unconstitutional. The holding of state office is not a matter of federal constitutional right except to the extent that a state statute or state action regarding eligibility for such office creates invidious distinctions or advances no legitimate state purpose. See Turner v. Fouche, 396 U.S. 346 (1970); see also Snowden v. Hughes, 321 U.S. 1 (1944). Moreover, this Office is aware of no cases which establish a constitutionally protected right to be appointed to a public office. Thus, the Legislature may constitutionally conclude that it is preferable to have municipal officials who are knowledgeable in governmental budget matters on a county budget committee.

^{2/} The Court's conclusion in Sailors was also based on its finding that the county school board "performs essentially administrative functions" which are "not legislative in the classical sense." 387 U.S. at 110. The county boards appointed a county superintendent, prepared annual budgets and levies of taxes, distributed delinquent taxes and performed other functions. See *id.* at 110, n. 7. After Sailors, however, the Court discarded this distinction, holding instead that "one person, one vote" applied to any popularly elected body, so long as it performed "governmental functions." See Hadley v. Junior College District, 397 U.S. 50 (1970); cf. Salyer Land Co. v. Tulare Water District, 410 U.S. 719 (1975) (principle does not apply to water district whose primary purpose was to provide for acquisition, storage, and distribution of water). The county budget committees proposed by L.D. 1710 clearly fulfill a governmental function.

^{3/} Based on this analysis, it is clear that the weighted voting procedure proposed by the bill, 30 M.R.S.A. § 1403(l)(B), as proposed by § 7 of L.D. 1710, is not necessary to make the bill conform with constitutional apportionment requirements, since these requirements do not apply to this type of procedure.

It is hoped that this analysis addresses your concerns. If you have any further questions, please do not hesitate to contact this Office.

Sincerely,

A handwritten signature in cursive script, appearing to read "James E. Tierney". The signature is written in dark ink and is positioned above the typed name and title.

JAMES E. TIERNEY
Attorney General

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