

MAINE STATE LEGISLATURE

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ATTORNEY GENERAL

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

May 18, 1989

Honorable John L. Martin
Speaker, Maine House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Speaker Martin:

I am writing to confirm advice rendered to you orally by my office recently concerning the constitutionality of 30-A M.R.S.A. § 1353, which provides for the formation of a finance committee by a county adopting a charter pursuant to Chapter 11 of Title 30-A. Your inquiry was whether this provision violated Article I, Section 22 of the Maine Constitution because it might be viewed as creating a governmental entity with the power to impose taxes which is not composed of elected officials. For the reasons which follow, it is the Opinion of this Department that the statute does not violate the constitutional provision because the committee which it creates is, in fact, composed of elected officials, and in any event does not have the ultimate authority to approve a county budget.

Article I, Section 22 of the Maine Constitution provides that "No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature." It appears clear that this provision means that a tax may not be imposed by any level of government in Maine unless approved by elected officials. City of Lewiston v. Lewiston Educational Directors, 503 A.2d 210, 214 (Me. 1985). The first question, therefore, raised by your inquiry is whether the finance committee contemplated by 30-A M.R.S.A. § 1353 consists of elected officials.

The statute contemplates two alternative methods of selection of the members of the finance committee:

A. Each county commissioner shall appoint the finance committee members from that commissioner's district from among the municipal officers of that district.

B. The municipal officers within each county commissioner district shall caucus and elect to the finance committee members from that district. The principle of proportional representation shall be followed in the election of the finance committee.
30-A M.R.S.A. § 1353(1).

Both of these alternatives provide for the choosing of the membership of the finance committee by elected officials, from among elected officials. In method A, the county commissioners, who are themselves elected, 30-A M.R.S.A. § 61, select the members of the finance committee from among the "municipal officers" of their respective commissioner districts. The term "municipal officers" is defined by 30-A M.R.S.A. § 2001(10) to include the selectmen or councillors of a town or the mayor and aldermen or councillors of a city.^{1/} All of these officials are required by law to be elected.^{2/} Thus, the requirement that members of governmental bodies imposing taxes be elected is met under method of selection A.

With regard to method B, the statute provides that the municipal officers, who as just indicated are elected officials, shall caucus and elect members of the finance committee. The statute does not indicate that the members so elected should be municipal officers themselves, but that is a reasonable interpretation of the Legislature's intention. Thus, the constitutional requirement is met for this method of selection also, since both the persons choosing the finance committee and the persons ultimately chosen are elected municipal officers.

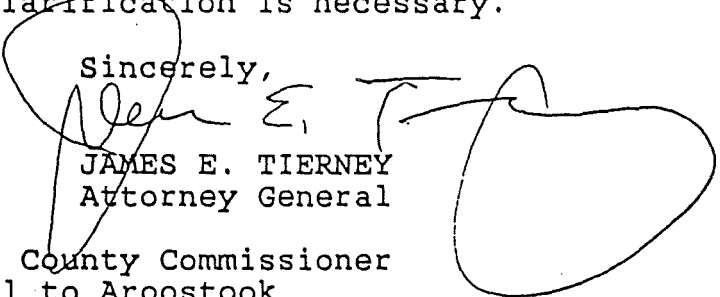
^{1/}It is true that by its terms this definition applies only to Part 2 of Title 30-A relating to municipalities, and therefore not to Part 1 of the Title which deals with counties. There is no reason to suppose, however, that the Legislature intended the term to have a different meaning in the first Part of the same Title, particularly since it did not choose to define the term separately for that Part.

^{2/}See, e.g., 30-A M.R.S.A. § 2525 (selectmen). It does not appear that the Maine statutes specifically provide for the election of city or town councillors, aldermen or mayors, but this Department is not aware that any of these officials in the State are appointed.

Beyond this, even if a court would find that the members of the finance committee are appointed rather than elected, the statute would still not violate the constitutional prohibition because the finance committee does not have ultimate authority to impose taxes. Under Section 1353, each annual county budget must first be submitted to the finance committee. If the committee approves the budget, it is then sent on to the county commissioners themselves for final approval. If the budget is not approved by the finance committee, the statute provides that the county operates on an interim budget consisting of not more than 80% of the previous year's budget until a permanent budget can be approved. In either case, therefore, the ultimate budget-fixing authority resides in elected officials. If the finance committee approves, the county commissioners, who as indicated above are an elected body, must approve. If the finance committee rejects the proposed budget, then the county operates on an interim budget of 80% pursuant to the direction of the Maine Legislature, also an elected body. In short, since final approval over the budget-establishing process is retained in either case in elected officials, Article I, Section 22 of the Maine Constitution is not violated. City of Lewiston v. Lewiston Educational Directors, supra at 214.^{3/}

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,


JAMES E. TIERNEY
Attorney General

JET/ec

cc: John D. McElwee, Aroostook County Commissioner
John Pluto, Special Counsel to Aroostook
County Commissioners

^{3/}In the City of Lewiston case, the Law Court noted in a footnote that, while it was alert to the possibility that a delegation of control over a city budget to a committee authorized to engage in collective bargaining might result in the "de facto" transfer of the taxing function away from elected officials to an appointed body, since the amount of money at issue in that case was so small in relation to the entire budget in question, the Court declined to find that a de facto transfer had occurred. Id. at 214, n. 10. Here, however, there is no possibility of such a transfer occurring, since, as indicated above, ultimate approval authority over the entire budget has been retained by elected officials.