

MAINE STATE LEGISLATURE

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February 2, 1993

Representative Walter E. Whitcomb
Minority Leader
Maine House of Representatives
State House Station #2
Augusta, ME 04333

Dear Representative Whitcomb:

You have inquired whether the recently enacted constitutional amendment restricting the ability of the State government to impose additional requirements on local units of government applies to legislation affecting the counties of the State. For the reasons which follow, it is the Opinion of this Department that it was the intention of the Legislature in enacting the amendment to include counties within its purview.

Article IX, Section 12 of the Maine Constitution was passed by the 115th Maine Legislature at its Second Regular Session, and was ratified by the voters on November 3, 1992. According to its terms, the amendment was effective on November 23, 1992. The text of the amendment, in its entirety, is as follows:

Section 21. State Mandates. For the purpose of more fairly apportioning the cost of government and providing local property tax relief, the State may not require a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures from State funds not previously appropriated to that local unit of government. Legislation

implementing this section or requiring a specific expenditure as an exception to this requirement may be enacted upon the votes of 2/3 of all members elected to each House. This section must be liberally construed.

The question which you pose is whether the phrase "local unit of government" in the amendment encompasses counties. In the Opinion of this Department, it does. This conclusion is compelled both by the language of the amendment itself, as well as its legislative history.

As indicated by its introductory clause, the purpose of the amendment was to provide "local property tax relief." County government in Maine relies for its funding in substantial part upon assessments made by the counties upon their constituent municipalities, assessments which are met by each municipality through the operation of its property tax. Consequently, it would appear clear from the plain language of the amendment that counties should be included within the phrase "local unit of government," since, like municipalities, they rely in great measure upon the local property tax.

This interpretation is consistent with the legislative history of the amendment. The amendment was first introduced at the First Regular Session of the 115th Legislature as Legislative Document No. 66. That bill proposed the following constitutional provision:

Section 21. State Mandates. For any state mandate imposed by statute, by executive order or by rule, the Legislature shall appropriate the amount necessary to reimburse the municipality the cost of the mandate. If the Legislature fails to appropriate the necessary funds, a municipality is not obliged to implement the mandate.

In its original form, therefore, the amendment was restricted to municipalities, and could not have been interpreted to apply to counties. After the amendment was sent to committee, however, a new version emerged which was of considerable length and which introduced the concept of "local units of government," to which the amendment applied. That phrase, in turn, was more specifically defined to include "municipalities, school districts, counties and special districts." Comm. Amend. A to L.D. 66, No. S-292 (115th Legis. 1991), proposing the enactment of Article IX, Section 21, paragraph 1(C) to the Maine Constitution (emphasis added). The new version of the amendment thus clearly contemplated that counties would be included.

Committee Amendment "A," however, was not enacted by the First Regular Session of the 115th Legislature and the entire amendment was held over until the Second Regular Session. At that session, the Joint Standing Committee on State and Local Government sent a substitute version of the amendment to the Legislature. Comm. Amend. B to L.D. 66, No. S-527 (115th Legis. 1992). This version continued to utilize the phrase, "local units of government" but eliminated the definition contained in Committee Amendment "A." Nonetheless, the focus of the new version was plain. It introduced for the first time the introductory clause which appears in the enacted version of the amendment, indicating that its purpose was to provide "property tax relief"; and it concluded with the statement that "[t]his section must be liberally construed to reduce the impact of state mandates on property taxpayers." The ensuing debate on the floors of both Houses of the Legislature continued this theme. See, in particular, the remarks of Representative Murphy, a supporter of the amendment, in the House of Representatives, indicating that its purpose was to provide property tax relief, and specifically discussing the fact that counties rely for more than 75% of their income on the property tax, and that the amendment would prevent further pressure on the property tax coming from county government. Legis. Rec. H-599 - H-600 (1992). It appears clear, therefore, that, notwithstanding the deletion of the definition of "local unit of government" including counties, the Legislature nonetheless understood that counties were covered by Committee Amendment "B."

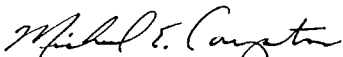
Committee Amendment "B" was the subject of a motion by Representative Joseph in the House of Representatives on March 25, 1992 that the House accept the minority "Ought Not to Pass" report. This motion was defeated. Before the House could vote to affirmatively adopt Committee Amendment "B," however, Representative Gray substituted an entirely new version of the constitutional amendment. House Amend. D to Comm. Amend. B to L.D. 66, No. 1237 (115th Legis. 1992). This amendment contained the text of the constitutional amendment which subsequently became law, and was adopted by the House without further debate as to its scope. Legis. Rec. H-636 - H-638 (1992). Nonetheless, there is no indication that the House intended that the phrase "local unit of government" have a different meaning in House Amendment "D" to Committee Amendment "B" than the meaning that it understood that phrase had in Committee Amendment "B" itself. The Senate subsequently concurred in the adoption of House Amendment "D" to Committee Amendment "B." Legis. Rec. S-563 - S-564 (1992).

It is clear, therefore, from the foregoing legislative history, that the Legislature understood from the time of the first appearance of the constitutional amendment on the floor

in 1991 in the form of Committee Amendment "A" that the amendment was intended to apply to county, as well as municipal, government. There is no indication that the Legislature was operating on any other assumption throughout its debates on subsequent versions of the amendment. Thus, this Department concludes, on the basis of its plain language, as well as its legislative history, that Article IX, Section 21 of the Maine Constitution applies to actions of the State government which affect the counties of the State.

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

Sincerely,


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Attorney General

MEC:sw

cc: President Dennis L. Dutremble
Speaker John L. Martin
Senator Georgette B. Berube
Representative Ruth Joseph
Co-Chairs, Joint Standing Committee
on State and Local Government