

MAINE STATE LEGISLATURE

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Honorable Joseph C. Brannigan
Maine State Senate
State House Station 2
Augusta, ME 04333

Dear Senator Brannigan:

I am writing in response to your inquiry into whether changes in the laws of the State involving crimes or civil infractions constitute "mandates" within the meaning of the recently enacted Article IX, Section 21 of the Maine Constitution, requiring that such new legislation be passed by two thirds of all members elected to each house of the Legislature, or, failing that, that the Legislature provide ninety percent of the increase in the local expenditures necessitated by such legislation. You offer, as an example of such legislation, Legislative Document 486, "AN ACT Concerning the Mandatory Use of Car Safety Seat Belts," of which you are the sponsor. L.D. 456 would establish a civil violation for an operator of a motor vehicle to fail to ensure that all persons in the vehicle wear a seat belt when one is provided. For the reasons that follow, it is the Opinion of this Department that such legislation does not contain a "mandate" within the meaning of the constitutional provision, and thus may be enacted by ordinary majorities of both houses.

Article IX, Section 21 provides in its entirety as follows:

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 purpose of this amendment is plain: to make it more difficult for the Legislature to enact legislation which will result in an increase in local property taxes. The amendment does not, however, purport to limit the Legislature's power with regard to any action which might conceivably result in increased expenditures by municipal government. Rather, the amendment provides that the State "may not require a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditure from local revenues" (emphasis added). It thus appears clear, from the plain language of the amendment, that the only kind of legislation which it is designed to affect is legislation which directly imposes new obligations requiring additional expenditures upon local units of government of the State.

This Department has also reviewed the extensive legislative history of the amendment, and can find no suggestion that the Legislature intended it to apply to legislation which might have an indirect financial effect on local government, as opposed to legislation which directly imposed obligations upon such government. Indeed, an earlier version of the amendment, Committee Amendment "B" to Legislative Document 66, which was passed by the Senate, Legis. Rec. S-169 (1992), contained a definition of "mandate" which specifically excluded changes in the laws of the State relating to crimes and civil infractions. As set forth more fully in Opinion 93-1 of this Department, a copy of which is attached, Committee Amendment "B" was not adopted by the Legislature as a whole, but there was no indication that its substitute, House Amendment "D" to Committee Amendment "B", was intended to change the scope of the amendment. Accordingly, this Department is of the view that legislation, such as L.D. 486, would not be affected by the amendment, even though its enactment could conceivably increase the law enforcement burdens of local government.

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

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC/bls

cc: Representative William B. O'Gara
Co-Chair, Joint Standing Committee on Transportation