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March 7, 1994

Honorable John J. Cleveland
Maine State Senate
State House Station 3
Augusta, Maine 04333

Re: L.D. 661, "AN ACT To Amend The Charter Of The Passamaquoddy Water District"

Dear Senator Cleveland:

I am responding to your letter of February 14, 1994, in which you requested an opinion on issues raised by the above-titled L.D. I will address your inquiries in the rder they are set forth in your letter.

Your first inquiry is whether the current provisions of the Passamaquoddy Water District Charter making all of the property of the water district subject to property taxation violate either Art. IX, § 8 or Art. I, § 6-A of the Constitution of Maine. It is the opinion of this Department that the property of the Passamaquoddy Water District may legally be taxed by municipalities which also receive water service from the district in accordance with the Charter provisions. If the taxing municipality is not also served by the water district, the municipality may tax district property only to the extent permitted by 36 M.R.S.A. § 651.

You have also inquired whether a repeal of the Passamaquoddy Water District Charter relating to taxability of district property would constitute a "mandate" under Art. 9, § 321 of the Maine Constitution or would require reimbursement to the affected communities under Art. IV, Pt. 3, § 23. It is the opinion of this Department that a repeal of the subject provision would neither be deemed a mandate nor would repeal obligate the State to reimburse affected municipalities for lost property tax revenues.

Article I, § 6-A, insofar as relevant, guarantees equal protection of the law to persons in Maine. See Lambert v. Wentworth, 423 A.2d 527 (Me. 1980). Article IX, § 8 of the Constitution provides, in substance, that all taxes on property must be apportioned and assessed equally according to the just (fair market) value of the

property. See Shawmut Inn v. Inhabitants of Town of Kennebunkport, 428 A.2d 384 (Me. 1981). The particular question involved in your inquiry is whether the Passamaquoddy Water District, a public municipal corporation, may have its property subject to municipal taxation while other such chartered districts are exempted from property taxation in whole, or in part, by general statute, viz., 36 M.R.S.A. § 651, or by specific provisions contained within the legislatively enacted charters for individual water districts. Our conclusion and reasoning is set forth below.

Providing the Passamaquoddy Water District's property is located in municipalities which also purchase water service from Passamaquoddy Water District, the Passamaquoddy Water District can pass the cost of such property tax through its rate base to the taxing communities. The taxes paid by the water district will be borne by the residents of the taxing community through increased water rates. In effect, residents of the municipalities are paying through their water rates an amount roughly equivalent to increased local property tax costs that would be borne by them if the property of the water district were otherwise exempt from tax. Cf. Brewer Brick Co. v. Inhabitants of Brewer, 62 Me. 62 (1872). This situation is analogous to the situation involved in Portland v. Portland Water Co., 67 Me. 135 (1877), where the Law Court determined that it was within the constitutional authority of the Legislature to allow a city to exempt property of a private water company in consideration of an agreement by that company to furnish water free of cost to the City. Thus, the ratepayers of the water district were, in effect, treated no differently economically than those of any other district.

The history of the taxability of the property of public municipal corporations and, in particular, water districts, supports the above conclusion. Prior to 1911, all property of public municipal corporations devoted to public uses was exempt from tax. P.L. 1903, ch. 46; and see Inhabitants of Boothbay v. Inhabitants of Boothbay Harbor, 148 Me. 31 (1952). In 1911, the law was amended to provide a more specific and limited exemption for public municipal corporations as follows:

> Section 6. The following property and polls are exempt from taxation:
>
> I. The property of the United States and of this state and the property of any public municipal corporation of this state appropriated to public uses if located within the corporate limits and confines of such public municipal corporation, and also the pipes, fixtures, hydrants, conduits, gate-houses, pumping stations, reservoirs, and dams used only for reservoir purposes, of public municipal corporations engaged in supplying water power or light if located outside of the limits of such public municipal corporations, but nothing herein contained shall abridge any power of taxation possessed by any city or town by virtue of any special act. P.L. 1911, ch. 120. (Amendatory language underlined).

This amendment specifically provided that the statute was not intended to abridge any power of their conferred on a municipality by any special act. Id. Thus, the Legislature provided for different property tax treatment which was likely already occurring with respect to certain property of public water districts. That there was a need for such flexibility in the statute is reflected by the significant variation in taxability of property in the 130 or so existing water districts. See Memorandum, dated February 4, 1994, from John Clark to Joint Standing Committee ~~in~~ Utilities (copy attached). This office is unable to determine the reasons for varying tax treatments but assumes there is a rational basis for such differentiation.

Despite variations in circumstances and tax treatment of water district properties, it is fair to conclude that the Legislature's intention was that the users, i.e. municipal ratepayers, bear substantially the same financial burden for water service, whether as a direct cost or as an increase in local property tax whether a water district's property was exempt or taxable. To conclude otherwise, would result in a different treatment of water district ratepayers with no rational basis in violation of Art. 1, § 6-A of the Constitution of Maine.

Based on the foregoing, it is my conclusion that the property of the Passamaquoddy Water District may legally be taxed by the served municipalities in which the property is located. Where, however, a municipality in which public water district property is located is not also served by the water district, that municipality may not tax property of the water district to any greater degree than is permitted by existing provisions of general law. See 36 M.R.S.A. § 651(D) and (E). Under such circumstances, allowing taxation of property otherwise exempt under Title 36 could be deemed a violation of the provisions of Art. IX, § 8 of the Maine Constitution. See Brewer Brick Co. v. Brewer, 62 Me. 62 (1872).

In your second inquiry, you ask whether repeal of the tax provision in the Passamaquoddy Water District charter would constitute a state mandate under Art. 9, § 12 of the Maine Constitution. Our answer to this inquiry is that a repeal of an existing statute is not a mandate under the cited constitutional provision.

You also inquire whether a repeal of the tax provision in the charter would require the State to reimburse the municipalities presently taxing the property of the Passamaquoddy Water District. Our answer to this inquiry is that such a repeal would not trigger the reimbursement provision of Art. 4, pt. 3, § 23 of the Maine Constitution because any exemptions which might affect the municipalities preexist the April 1, 1978 date set forth in section 23.

I hope your inquiries have been adequately addressed. If you require clarification or have further questions, please feel free to contact me.

Yours very truly,

MICHAEL E. CARPENTER
Attorney General

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