

MAINE STATE LEGISLATURE

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March 25, 1994

Joint Standing Committee on
Appropriations and Financial Affairs
State House Station #115
Augusta, ME 04333

Dear Members of the Committee:

I am writing in response to your inquiry of March 21, 1994, asking whether a reduction in State funding of the costs of the required remediation and closure of municipal landfills would constitute an unfunded State "mandate" within the meaning of Article IX, Section 21 of the Maine Constitution, requiring the Legislature either to fund 90 percent of such costs, or to enact the reduced appropriation by a two-thirds vote. For the reasons which follow, it is the Opinion of this Department that a reduction in funding of this program would not constitute a mandate within the meaning of the constitutional provision.

Article IX, Section 21, which became effective on November 23, 1992, provides:

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 vote of 2/3 of all members elected to each House. This section must be liberally construed.

As contemplated by its terms, this provision was implemented by legislation enacted by the First Regular Session of the 116th Legislature. P.L. 1993, ch. 351, enacting 30-A M.R.S.A. § 5685. Subsection 1(C) of that enactment introduces the term "mandate" to refer to an action of the State government that requires, in the words of the constitutional amendment, "a local unit of government to expand or modify that unit's activities so as to necessitate to additional expenditures from local revenues," and defines a "mandate" to be any "law, rule or executive order of this State enacted, adopted or issued after November 23, 1992." In order to qualify as a "mandate," therefore, a law, such as the one described in your question, would have to impose an obligation on a local unit of government to spend money after that date.

In the view of this Department, the legislative program for the remediation and closure of municipal solid waste landfills would not qualify as a "mandate," because it was established well before November 23, 1992. The program was enacted, effective June 29, 1987, by the Legislature when it established within the Department of Environmental Protection, a remediation and closure program for solid waste landfills. P.L. 1987, ch. 517, § 25, enacting 38 M.R.S.A. § 1310-C, *et seq.* The program generally required the Department to issue rules regarding the operation of municipal solid waste landfills, and to require each municipality who was operating a landfill which was not in compliance with the rules to bring its facility into compliance so as to be able to obtain a permit to continue to operate. If the permit was not obtained by a time certain, it would be required to be closed. The Department subsequently issued rules in 1989, specifying that the deadline for compliance with the operational requirements and the obtaining of a permit would be no later than January 1, 1992. Me. Dep't of Environmental Protection Rules, ch. 400, § 4(M). The Legislature subsequently extended this deadline to December 31, 1992. P.L. 1991, ch. 622, § X-14, amending 38 M.R.S.A. § 1310-N(6).¹ The general thrust of the statute and rule, therefore, was to compel the remediation or the closure of municipal solid waste landfills which could not operate in compliance with the rule. This requirement was in place well in advance of the effective date of the constitutional amendment, and cannot be considered a "mandate" under that amendment.

¹In 1993, the Legislature authorized the Commissioner to allow a municipality to continue operating an unlicensed landfill if the municipality enters into an agreement with the Commissioner providing for an alternative method of solid waste disposal and an agreement to cease accepting waste at the unlicensed landfill on a date certain. P.L. 1993, ch. 378, §§ 5, 6, enacting 38 M.R.S.A. § 1310-N(6-B).

As part of the original statute establishing the remediation and closure program, the Legislature also enacted the following provision concerning the costs of such remediation and closure:

Subject to the availability of funds, the department shall issue grants to eligible municipalities for 75% of the cost of closure and for 90% of the cost of remediation.
38 M.R.S.A. § 1310-F.

To provide funds for this effort, the Legislature authorized, and the voters approved, a series of bond issues, providing money to the Department to distribute to affected municipalities on the basis of priorities established by the Department by rule. The first of these bond issues, for \$8 million, became available after its approval by the voters in 1987. P.&S.L. 1987, ch. 70. Apparently, your Committee has been advised that the Department now seeks to submit legislation to reduce the percentage of the State's participation in the closure and remediation of unlicensed municipal solid waste landfills. Your question, therefore, is whether the passage of such legislation would constitute a "mandate" within the meaning of the constitutional provision.

In the view of this Department, the reduction of such funding would not constitute a "mandate." As indicated above, the legislative requirement at issue is the provision of the original statute, passed in 1987, directing that unlicensed municipal solid waste landfills either come into compliance with operating rules so as to obtain licenses or close. The fact that the Legislature chose, at the same time, to establish a funding program to assist municipalities in complying with this mandate does not make the mandate contingent upon the continuing provision of such funds. Thus, if the Legislature were to reduce, or even eliminate, such funding in the future, such action would not alter the status of the original requirement as being one which had been imposed upon the municipalities of the State in advance of November 23, 1992.

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

Sincerely,


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Attorney General

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