

MAINE STATE LEGISLATURE

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March 20, 1995

Senator Dana C. Hanley
Representative George J. Kerr
Chairs, Joint Standing Committee on
Appropriations and Financial Affairs
State House Station #5
Augusta, ME 04333

Dear Senator Hanley and Representative Kerr:

I am writing in response to your inquiry of March 7, 1995, concerning the proposal of Governor King to limit the State's contribution to the Maine State Retirement System for teacher retirement costs in the upcoming biennium. Your question is whether such action, if enacted, would constitute a "state mandate" within the meaning of Article IX, Section 21 of the Maine Constitution. For the reasons which follow, it is the Opinion of this Department that the Governor's proposal would not constitute a mandate.

The Governor's proposal is contained in Part G of Legislative Document 706, the General Appropriations Act for Fiscal Years 1996 and 1997. As you describe it, the proposal would limit any increase in the amount of money which the State would contribute to the Retirement System for teacher retirement costs to 3 percent of the aggregate salary base of the teachers in the preceding fiscal year. Any retirement costs in excess of this limit, caused by an increase in a teacher's salary of more than 3 percent over the preceding fiscal year, would have to be borne by the School Administrative Unit employing the teacher. Your question is whether such an action, if adopted by the Legislature, would count as a "state mandate" within the meaning of the constitutional provision.

Article IX, Section 21 of the Maine Constitution provides, in pertinent part:

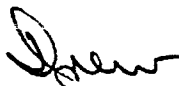
For the purpose of more fairly apportioning the cost of government and providing local property tax relief, the

State may not require a local unit of government to expand or modify that unit's activities so as to necessitate additional expenditure from local revenues [unless the State provides 90 percent of the funding or enacts the measure by a vote of 2/3 of all members elected to each House].

In the view of this Department, the proposal which you describe would not be covered by this provision. Broadly speaking, the suggestion which your question raises is that if the Legislature has once appropriated a certain amount of money to subsidize municipal activities, such as the amount of money annually appropriated for the subsidization of secondary school education in the State, it is obliged by Article IX, Section 21 to continue to fund municipal activities at that level. In the view of this Department, a reduction in the amount of subsidization of municipalities does not constitute a "requirement" that local units of government expand or modify their activities, within the meaning of the constitutional provision. A decision by the Legislature to reduce funding to municipalities does not "require" municipalities to do anything, but merely means that, if they wish at their option to continue to operate at the same level as before, they would have to find additional funding sources. That obligation, however, is not one which the Legislature would have imposed upon them, but would result from a decision by an individual municipality to continue to provide a particular service in the absence of State subsidy. The State government would not violate Article IX, Section 21 by withdrawing all or part of the subsidy. Similarly, the State government would not violate the constitutional provision if it simply limited the percentage by which a subsidy could increase.

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

Sincerely,



ANDREW KETTERER
Attorney General

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