

MAINE STATE LEGISLATURE

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April 27, 1995

Senator Charles M. Begley
Representative Pamela H. Hatch
Chairs, Joint Standing Committee on Labor
State House Station #115
Augusta, ME 04333

Dear Senator Begley and Representative Hatch:

I am writing in response to your inquiry of April 12, 1995, concerning whether Legislative Document 537, "AN ACT to Include Salaries, Pensions and Insurance for Binding Arbitration under the Municipal Public Employee Labor Relations Laws," would, if enacted, constitute a "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 bill, if enacted, would constitute a mandate.

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

... 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 90 percent of the cost of the expenditures or the Legislature approves legislation in question by a 2/3 vote].

Thus, in order to qualify as a "mandate" under this provision, an action of the Legislature must not only require that local units of government modify their activities, but that modification must "necessitate" additional expenditures from local revenues to occur.

L.D. 537 would amend 26 M.R.S.A. § 965(4). That subsection already requires that, with regard to municipal labor disputes covered by it, controversies that do not relate to "salaries, pensions and insurance" are subject to binding arbitration at the request of either party to the dispute. However, although controversies relating to

"salaries, pensions and insurance" may be sent to arbitration, the recommendations of the arbitrators with regard to these subjects are advisory only. L.D. 537 would amend this latter provision and make controversies related to "salaries, pensions and insurance" also subject to binding arbitration. Thus, if L.D. 537 were enacted, municipal workers would, for the first time, be able to force binding arbitration with regard to disputes which they might be having with a particular municipality over "salaries, pensions and insurance." Your question is whether, in providing such a remedy, the Legislature would be "requiring" municipalities to modify their activities so as to "necessitate" additional expenditures, thereby imposing a "mandate" on them within the meaning of the constitutional provision.

In the view of this Department, however, the passage of L.D. 537 would constitute such a "mandate." It is clear, first of all, that the proposed amendment to Section 965(4) would require local units of government to modify their activities in that they would now be required to submit disputes relating to salaries, pensions and insurance to binding arbitration. The question then becomes whether such a requirement would "necessitate" additional expenditures to be made. On this score, the only way in which additional expenditures would not be required would be if the arbitrators were to rule in favor of the municipality in every case--an exceedingly unlikely possibility. Thus, since it is very likely that the effect of the amendment would be that some municipalities of the State would incur additional financial obligations in the future, the measure satisfies the requirement that it would "necessitate additional expenditures" and would therefore constitute a mandate.

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

Sincerely,



ANDREW KETTERER
Attorney General

AK:sw

cc: John D. Wakefield, Director
Office of Fiscal and Program Review
Representative Hugh A. Morrison
Sponsor, Legislative Document 537