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March 19, 2019

BY HAND-DELIVERY

Senator Matthew Pouliot
3 State House Station
Augusta, ME 04333-0003

RE: LD 824, "An Act to Allow a Municipality to Opt Out of Collecting Personal Property and Business Equipment Taxes"

Dear Senator Pouliot:

You have asked whether our office has any concerns regarding the constitutionality of LD 824, "An Act to Allow a Municipality to Opt Out of Collecting Personal Property and Business Equipment Taxes," particularly with regard to Article IX, Sections 8 and 9 of the Maine Constitution. LD 824 would allow each municipality in the State to "adopt an ordinance to exempt personal property from municipal assessment and collection of tax." Any exemption so adopted by a municipality under the bill "must be uniform and include all personal property including business equipment." Based on our analysis of the bill and relevant Law Court decisions, we have significant concerns about the constitutionality of LD 82. Our concerns with LD 824 are consistent with three prior opinions of this office, in which we concluded that the Legislature may not delegate to all municipalities the power to determine property tax exemptions. See *Op. Me. Att'y Gen.* (Feb. 2, 1977); *Op. Me. Att'y Gen.* 79-74 (April 23, 1979); and *Op. Me. Att'y Gen.* 81-35 (April 7, 1981). (opinions enclosed).

Article IX, Section 8. The central legal problem presented by LD 824 results from its conflict with the requirements of Article IX, Section 8 of the Maine Constitution. Section 8 requires in pertinent part: "All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof." The Law Court has described this provision as establishing two requirements for a valid property tax: a valuation requirement and an apportionment requirement. *Eastler v. State Tax Assessor*, 499 A.2d 921, 924 (Me. 1985); see also *Opinion of the Justices*, 2004 ME 50, 850 A.2d 1145; *Delogu v. City of Portland*, 2004 ME 18, 843 A.2d 33.

The leading Maine case on the apportionment requirement is *Brewer Brick Co. v. Inhabitants of Brewer*, 62 Me. 62 (1873). In that case, the Town of Brewer had voted to exempt a brick manufacturing company from property taxation for a period of 10 years. The town's vote was specifically authorized by a statute permitting towns to grant 10-year exemptions from property taxes to new industries. R.S. ch. 6, § 6 (1871). A year later, the town changed its position and assessed a property tax. The company sued to recover the property tax, claiming it was entitled to nine more years of exemption from property taxes pursuant to the statute.

The Law Court held that the statute was unconstitutional because (1) it approved taxation for private purposes, and (2) it violated Article IX, Section 8. The Court's holding with respect to Article IX, Section 8 was predicated on its concern that the statute could result in one municipality exempting a class of property that would be taxable in other municipalities. See *Brewer Brick*, 62 Me. at 74. Although *Brewer Brick* was decided 146 years ago in 1873, it is still good law. See *Delogu v. City of Portland*, 2004 ME 18, ¶¶ 23-25, 843 A.2d 33.

In short, based on *Brewer Brick* and more recent Law Court decisions, we have significant concerns about our ability to successfully defend the bill if it were enacted and its constitutionality were challenged in court. See *Dolloff v. Gardiner*, 148 Me. 176, 183-184, 91 A.2d 320, 323 (1952); see also *Opinion of the Justices*, 159 Me. 420, 428-429, 191 A.2d 627, 632-633 (1963).

Article IX, Section 9. We also have concerns about the bill's potential conflict with Article IX, Section 9, which provides: "The legislature shall never, in any manner, suspend or surrender the power of taxation." The Law Court has repeatedly "construed this language as creating a 'strong and sweeping prohibition' against delegation of the legislature's power to tax." *Delogu*, 2004 ME 18, ¶ 40, 843 A.2d 33 (internal quotations omitted). The Law Court emphasized that:

[t]axation is legislative. What money shall be raised by taxation, what property shall be taxed, what exempted, rests exclusively with the Legislature to say, without any limitations, except such as are imposed by express constitutional provision.

Greaves v. Houlton Water Co., 143 Me. 207, 211, 59 A.2d 217, 219 (1948).

In a 1963 Opinion of the Justices, the Justices stated that the Legislature (1) "may constitutionally grant the right to a municipality to levy a tax upon persons carrying on or exercising within such municipality any trade, business, profession, vocation or commercial activity measured by the gross receipts or gross income from such activities" and (2) "may grant the right to a municipality to specify by reasonable classifications exemptions from such tax." *Opinion of the Justices*, 159 Me. 420, 428-430, 191 A.2d 627, 632-633 (1963). The Opinion made clear, however, that the Justices' approval of this

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delegation of the right to a municipality to craft tax exemptions did not apply to property taxes in light of Article IX, Section 8. *See id.*

Thus, in light of Article IX, Sections 8 and 9, and the Law Court's interpretation of those provisions, we are concerned that the Law Court may conclude that LD 824 runs afoul of the Constitution's prohibition against "surrendering" the power of taxation.

I hope that this information is useful. Please let me know if you have further questions.

Sincerely,



Aaron M. Frey
ATTORNEY GENERAL

AMF/lsf

Enclosures

cc: Senator Benjamin Chipman, Senate Chair Taxation Committee
Representative Ryan Tipping, House Chair Taxation Committee