

MEMORANDUM

TO: Knox County Commissioners

FR: James W. Brannan, Esq.

DA: October 21, 2003

RE: Knox County funding task force recommendations

I. Factual Background:

The Knox County Law Enforcement Funding Task Force has recommended that the Knox County Commissioners implement a tax assessment “credit” for municipalities which maintain full time law enforcement departments. The Task Force concluded that the municipal police departments provide a service of value to the entire county by freeing up county officers for duty elsewhere. The credit would lower the county tax assessment to those municipalities providing full time law enforcement departments and increase the county assessment to those municipalities which do not. “Municipalities may reduce or eliminate any increases in their assessment created by the credit system by providing less than full time local law enforcement resources through special contracts with the county, the state police or other municipalities.” By this, I believe the Task Force means that municipalities without police forces can reduce their assessments for county patrols by contracting with (and paying separately for) coverage through the state, another municipality or the county. Certain exemptions for Vinalhaven and North Haven for increased assessment will be maintained so long as these municipalities maintain their separate contracts with the county for increased patrols.

The amount of the credit was selected to be 25% of the assessment for patrol presently assessed against those four municipalities (Camden, Rockland, Rockport and Thomaston) which presently have police departments. No particular rationale appears for the 25% figure: “[t]he

Task Force believes this is an appropriate starting point when considering the individual and cumulative adjustments to the municipal assessments.” The total county Sheriff’s budget allocated to patrol totals \$556,165. The cost to make up the loss of the four 25% credits (\$56,915) would simply be allocated among the remaining municipalities.

You have sought my legal advice on this proposal.

II. Legal Analysis.

The Constitution of the State of Maine provides, 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.” Me. Const. Article IX, Section 8. When county tax is authorized by state statute, the county commissioners assess it according to a county-wide mill rate upon the real and personal property in the municipalities within the county. *See* 30-A M.R.S.A. § 706.

According to 30-A M.R.S.A. § 452:

The sheriff in each county, in person or by the sheriff’s deputies, to the extent the sheriff undertakes to patrol, shall patrol those areas in the county that have no local law enforcement but may not be required by law to patrol the entire county.

The county commissioners, with the sheriff’s agreement, may enter into a contract with a municipality under section 107 to provide specific patrol services by the sheriff’s department in return for payment for these services.

Thus, tax may be assessed to support a sheriff’s department which must patrol those areas which do not have any local law enforcement and which also may patrol other municipalities under special contracts for their services (as Vinalhaven has now).

Section 107 provides:

In addition to any service authorized by or required of counties in this Title, the county commissioners of each county may develop and contract to provide any service that a municipality may perform. The county commissioners may develop such a service prior to executing a contract with a municipality but, unless otherwise provided for in this Title, may deliver the service only upon a contract with one or more municipalities or others as described in subsection 4. The county commissioners *may contract with municipalities*, other political subdivisions of the State, regional planning councils, councils of government, quasi-municipal corporations, any agency or instrumentality of the State or private enterprises ***to enable the county to perform or to assist the county in the performance of all or part of the services contracted for by a municipality.*** . . .

5. Fees. The cost of developing and providing the service ***must be borne by those municipalities or other public or private entities using the service or by other means, but must not in any way be borne by the tax for which municipalities are assessed pursuant to section 706.***

(emphasis added). In other words, the county may contract with municipalities regarding extra patrol services *but only so long as the cost associated with any such contracts is **not** borne by the county tax.* The same constraints are placed on the provision of ambulance services. 30-A M.R.S.A. § 457. If the sheriff is going to patrol, however, he **must** patrol those municipalities without local law enforcement and so that service could not be subject of a section 107 “special contract” because the mandatory patrol is “required”.

Rather than seeking to provide extra service, the County is seeking to enter into contracts to exempt its sheriffs from patrolling an area they are not required to patrol anyway, or, in other words, to obtain the assistance of the four municipalities in performing discretionary county services which the affected municipalities would finance by a credit against their tax assessments. All the municipalities would still be taxed at the same mill rate but the burden, the

allocation, for patrol services would be placed more heavily on those municipalities which would actually be using the services.

Not all classifications that result in different treatment are constitutionally prohibited; the equal protection provisions of the Maine and United States Constitutions forbid only those discriminatory legislative classifications that are “arbitrary, unreasonable or irrational.” *McBreairty v. Commissioner of Administrative and Financial Services*, 663 A.2d 50, 53 (Me. 1995) citing *Lambert v. Wentworth*, 423 A.2d 527, 531 (Me.1980). Where the discrimination does not involve a fundamental right or an inherently suspect classification, the Law Court reviews an asserted equal protection violation pursuant to the “rational basis test, *i.e.*, the existence of a rational relation between the classification challenged and the intended goal of the legislation.” *Id.*; *School Admin. Dist. No. 1 v. Commissioner, Dep't of Educ.*, 659 A.2d 854, 857 (Me.1995). Thus, in *McBreairty*, the Court upheld the constitutionality of the provision of subsidies to school administrative units in organized areas against a challenge by unorganized towns which received services but not subsidies as rationally related to the legislative goal of lessening the financial burdens associated with education on those towns and municipalities which had to pay for the services the unorganized territories received from the state without payment. In that case the Court also rejected the plaintiffs’ argument that the assessment imposed against the unorganized territories for LURC services violated Section 8 of Article IX because the tax was for services provided to both the unorganized and organized areas and property owners in the organized areas of the State were not similarly taxed. The Court noted that while assessment had to be on an equal basis, “[n]onetheless, the Legislature, may create separate tax districts and tax the districts differently, if the assessed taxes result in some special

benefit to the taxed district. *Town of Stonington v. Town of Deer Isle*, 403 A.2d 1181 (Me.1979)], 403 A.2d at 1184-85 (doctrine of special purpose taxation permitted higher tax burden on Stonington property owners than on Deer Isle property owners because Town of Stonington and its residents enjoyed greater local benefit as a result of the taxation); *Opinion of the Justices*, [146 Me. 239, 248, 80 A.2d 421 (1951).]” *Id.* at 954.

As long as all property within a given district is assessed at a uniform rate, and the benefit from the tax is for a public purpose within the district, the constitutional requirement of “equality of taxation is not violated even though the local rate prescribed by the Legislature in [one district] differs from that prescribed in [another district].” *Sawyer v. Gilmore*, 109 Me. 169, 186, 188, 83 A. 673 (1912); *see also Opinion of the Justices*, 383 A.2d at 652 (statute providing for assessment upon all property throughout tax district at its just valuation, and using a uniform rate of taxation, would be constitutional if enacted).

Id. Further, although Article IX, Section 8 requires equal *assessment* of property taxes, it does not apply to the manner in which the government chooses to spend tax revenues. There is no requirement that the Legislature distribute tax revenues equally, *see Opinion of the Justices*, 339 A.2d 492, 510 (Me.1975) (legislative scheme for distribution of revenues lies outside scope of Me. Const. art. IX, § 8), and the method of distribution is not a factor the Court will scrutinize when it considers a tax statute’s constitutionality. *Sawyer*, 109 Me. at 174-76, 83 A. 673.

III. Conclusion:

Thus, in theory it would not appear that what the County proposes would be unconstitutional. It also appears that the statute in question, 30-A M.R.S.A. § 107 is expansive enough to allow the County to execute a contract with and pay a municipality to assist it in providing the services it otherwise might provide.

I do have some concerns whether the County has the authority under state statutes to grant tax “credits” where a municipality provides county services, and how the contract price is arrived at.

I can find no authority for granting credits in state statutes. Since counties (and their powers) are entirely creatures of statute it might be better to calculate any “fee” for assisting with county work on the basis of exactly how much the County is saving and reallocate costs (for budget purposes) to those areas the County still has to patrol on the basis of actual costs incurred.

James W. Brannan, Esq.