

February 2, 2007

1. Hon. Jon S. Corzine
Governor
New Jersey Statehouse
P.O. Box 001

Trenton, New Jersey 08625-0001

Formal Opinion No. 2-2007

Re: Whether Assembly Bill No. A-1, which authorizes local property tax credits for homesteads and calculates those credits in part on household income, violates the State Constitution.

Dear Governor Corzine:

Assembly Minority Leader Alex DeCroce raised an issue as to whether Assembly Bill No. A-1, which uses a property owner's income in calculating and limiting homestead tax credits, violates the State Constitution. You referred this matter for our review. Please be advised that the Homestead Credit Clause of the State Constitution, N.J. Const. art. VIII, §1, ¶5, vests broad discretion in the Legislature to provide tax credits for homesteads "at such rates and subject to such limits as may be provided by law." In our view, this provision encompasses the authority to calculate homestead tax credits based on a property owner's income. Thus, the State Constitution does not preclude consideration of a property owner's income when calculating a tax credit for local property taxes on homesteads.

Assembly Bill No. A-1

Assembly Bill No. A-1 authorizes tax credits at rates of 20%, 15% or 10% of a homestead owner's local property taxes depending on the homestead owner's household income. Homestead owners with more than \$250,000 in household income are not eligible for a tax credit. The bill is consistent with the Homestead Credit Clause, does not run afoul of the Uniformity Clause, N.J. Const. art. VIII, §1, ¶1, and is consistent with the practice since 1990 to use statutes that calculate homestead tax credits and rebates based on income. See L. 1990, c. 61; L. 1999, c. 63; L. 2001, c. 159; L. 2004, c. 40.

The Uniformity Clause

The Uniformity Clause provides, in pertinent part:

Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.

[N.J. Const. art. VIII, §1, ¶1.]

All real property must be taxed at the same general rate without consideration of the personal

status of the property owner unless a constitutional provision provides otherwise.

The Homestead Credit Clause

The Homestead Credit Clause empowers the Legislature to enact legislation that provides local property tax credits or rebates for homesteads. The Clause states:

The Legislature may adopt a homestead statute which entitles homeowners, residential tenants and net lease residential tenants to a rebate or a credit of a sum of money related to property taxes paid by or allocable to them at such rates and subject to such limits as may be provided by law. Such rebates or credits may include a differential rebate or credit to citizens and residents who are of the age of 65 or more years, or less than 65 years of age who are permanently and totally disabled according to the provisions of the Federal Social Security Act, or are 55 years of age or more and the surviving spouse of a deceased citizen or resident of this State who during his lifetime received, or who, upon the adoption of this amendment and the enactment of implementing legislation, would have been entitled to receive a rebate or credit related to property taxes.

[N.J. Const. art. VIII, §1, ¶5.]

The Clause provides the Legislature with considerable flexibility in determining the scope of any credit or rebate authorized for homestead owners. Rubin v. Glaser, 83 N.J. 299, 303 (1980)(upholding statute excluding vacation homes from homestead rebates since “[u]nquestionably, the Constitution envisages vesting the Legislature with discretionary powers within the constitutional framework. For the Legislature ‘may’ adopt a homestead statute ‘subject to such limits as may be provided [in the Legislature’s judgment] by law.’”)(quoting N.J. Const. art. VIII, §1, ¶5).

Legislative history provides insight into the scope of this Clause. The evolution of the Clause reveals that legislators considered proposing an amendment that linked the rate of homestead credits specifically to percentages of household income — similar to what Assembly Bill No. A-1 does. However, in order to provide future Legislatures greater flexibility in dealing with property tax relief, lawmakers ultimately settled on the broader language of the Homestead Credit Clause. Specifically, the penultimate draft of the Clause provided for credits or rebates “at a rate not less than 5% nor more than 10% of household income.” ACR Nos. 175, 177 and 178. After commentary during public hearings that this language, if fixed in the Constitution, would unduly limit legislative flexibility in fashioning the rates and limits of homestead credits and rebates in future years, the resolution was revised. In place of language setting credits and rebates as a specific percentage of household income, the revised proposal — now codified in the Constitution — provided for credits or rebates “at such rates and subject to such limits as may be provided by law.” See Public Hearings on SCR 120, 121, 122, 137, 139, 140; Assembly Committee Substitute for ACR 175, 177, 178; ACR 176, as amended; and ACR 180 and 187 at p. 22 (1974).

A hearing on the revised, and ultimately final, language was held on June 4, 1975. At the hearing, attended only by Assemblyman Walter E. Foran, he noted that

[t]he passage of this resolution by both Houses of the Legislature and its subsequent adoption by

the electorate would provide flexibility for the Legislature in dealing with property tax relief generally. The specific provisions of such relief would then appear in individual bills and the provisions of such bills could be altered as situations changed.

[Public Hearings for ACR Nos. 175, 177 and 178, p. 1-2.]

The legislative history thus demonstrates that the proposed Homestead Credit Clause was amended not to eliminate the Legislature's ability to base homestead credits or rebates on income, but to ensure that the Legislature had maximum flexibility to decide how to calculate such credits and rebates in future years, without being tied to specific numerical rates in the Constitution.

Formal Opinion No. 15-1976

Attorney General's Formal Opinion No. 15-1976 took a similar view about the history of the Clause. As the Opinion states:

The history of Art. VIII, §1, par. 5 indicates an intent to use the term "rebate or credit" broadly. Earlier versions specifically limited the amount of relief that could be afforded and required that such relief be in relation to household income. S. Con. Res. 122, 140 (1974). The resolution finally adopted excluded such limitations apparently on the basis that they were too detailed and inflexible.

[Attorney General's Formal Opinions, 1974-1977, p. 177.]

The Opinion next recited Assemblyman Foran's statement, excerpted above. The Opinion concluded that homestead tax relief for all citizens calculated at a particular rate fell within the meaning of the Homestead Credit Clause and was constitutional. Id. at 178.

Formal Opinion 15-1976 went on to address whether the Clause authorized the Legislature to give senior citizens an additional homestead rebate or credit beyond that available to homestead owners generally. Implicitly recognizing that status as a senior citizen is a personal characteristic of the property owner, the Attorney General advised that the Uniformity Clause would not permit preferential treatment based on that status, absent a constitutional provision supporting such relief. Such support could not be found in the Homestead Credit Clause as it existed at that time, because that Clause allowed for tax credits or rebates for owners of homesteads without a distinction based on age. Nor could authorization for deferential treatment of senior citizens be found in N.J. Const. art VIII, §1, ¶4, which authorizes the Legislature to give senior citizens special tax relief in the form of a local property tax deduction. Therefore, Formal Opinion 15-1976 concluded that the special treatment proposed for senior citizens was unconstitutional. [\[1\]](#)

In contrast, the legislative history of the Homestead Credit Clause establishes that the language "at such rates and subject to such limits as may be provided by law" includes income as a factor that may be considered in calculating tax credits and rebates. Therefore, we conclude that the questioned provisions of Assembly Bill No. A-1 are constitutional.

Sincerely yours,

STUART RABNER

ATTORNEY GENERAL OF NEW JERSEY