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Judge: State tax unconstitutional Impact on school funding law unclear

By DANIEL BARRICK
 Monitor staff

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A superior court judge has ruled that the statewide property tax at the heart of New Hampshire's education funding system is unconstitutional. But it's unclear what impact the ruling will have on the larger school funding debate, since it applies only to taxes collected from a handful of people in a single tax year.

The ruling, issued on Friday by Judge Kenneth McHugh of Rockingham County Superior Court, came in a case brought by several property owners in Portsmouth and Rye, who challenged their 2002 property assessments. The plaintiffs argued that differing property values in different towns resulted in an unfair division of the statewide property tax burden.

McHugh agreed, but he limited his opinion to the 2002 tax year.

"For the tax year 2002, the statewide property tax assessments are disproportionate both within each municipality and between the various municipalities in the state," he wrote. "This disproportionality evidences a widespread scheme of intentional discrimination and is therefore unconstitutional."

Since individual towns assess property, which is then taxed at a statewide rate, the tax is not equally applied, McHugh wrote.

The ruling goes on to say that property tax assessments must be redone for 2002, with abatements for those property owners who were over-assessed. But McHugh acknowledges that the ruling will likely go before the state Supreme Court.

"The court recognizes that its findings herein will create a major procedural dilemma for the state," McHugh wrote. "... However, the court cannot ignore the constitutional mandate of the guarantee of a fair and reasonable property tax merely because the implementation of a proper tax structure will be difficult."

Associate Attorney General Anne Edwards, who argued the state's case, said she would appeal McHugh's ruling. She said the ruling, if upheld, would have little influence on the ongoing school funding debate.

"It doesn't apply at all to the current funding formula or the current system," she said. "And there have been significant changes since 2001 to the state's assessment method." She said the state has improved its oversight of town assessments in recent years.

Robert Shaines, the Portsmouth attorney representing the plaintiffs, envisioned a wider application of McHugh's ruling.

"This paves the way to strike down the statewide property tax altogether," he said.

He added: "Under any view, this is an unconstitutional tax. We weren't looking to particularly break the system. But if the tax is unconstitutional, it shouldn't have been paid by anybody."

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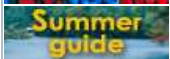
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The property owners, in suing their respective towns, did not claim that their individual assessments were excessive. Rather, they asked the court to find that the property tax system as a whole was irregular and unconstitutional.

The towns argued that they were mandated by the state to collect statewide property taxes, so the attorney general's office handled the defense.

In a written statement, Gov. John Lynch described the statewide property tax as "a gimmick that puts virtually no real money into New Hampshire's school system."

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