

MAINE STATE LEGISLATURE

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June 26, 1923

To Honorable Percival P. Baxter, Governor of Maine
Re: Pardons - Casting Vote

In reply to your question about a tie vote of the council in relation to applications for pardon, I wish to say that in my opinion the Governor has no power to make himself a part of the council and cast a deciding vote.

Under the Constitution in Article V, Part First, Section 11, it is provided:

"He shall have power, with the advice and consent of the council, to remit after conviction all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in case of impeachment."

The proper interpretation of the words "advice and consent of the council" may be gathered from Article V, Part Second, Section 1, which provides among other things,

"and he with the councillors or a majority of them may from time to time hold and keep a council for ordering and directing the affairs of state according to law."

The theory of the whole system of government by the executive and an executive council seems to be that the executive shall ask advice of the council in relation to such matters as are contemplated by the Constitution and that a majority of the council may advise or give consent on any subject brought before them by the Governor or by petition.

I am, therefore, of the opinion and advise you that you should act in matters of pardon upon the majority vote of the council and if the council fail to agree, they cannot give you advice within the meaning of the law, nor can they give their consent to the doing of any act of the Governor which is contemplated by the Constitution.

Ransford W. Shaw
Attorney General