

MAINE STATE LEGISLATURE

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March 11, 1937

To the Honorable Senate of the
Eighty-eighth Legislature:

In an Order passed in your honorable body of March 10, 1937, you respectfully requested of the Attorney General and advisory opinion as to what legal effect I. B. 1, "An Act to Amend Chapter 15 of the Public Laws of 1937, entitled, "An Act Appropriating Monies for Overdrafts Already Incurred Due to Insufficient Appropriations and Anticipated Overdrafts and Other Obligations for which no Legislative Appropriations have been made'" has on (H. P. 1475)(L. D. 697) "An Act Appropriating Moneys for Overdrafts Already Incurred Due to Insufficient Appropriations and Anticipated Overdrafts and Other Obligations for which no Legislative Appropriations Have been Made, the latter bill having been enacted into law during this present session of the Legislature."

The question, as worded, may have been intended to make inquiry as to the effect of either the filing of the initiative petition, assuming the same to be in proper form and supported by the requisite number of signatures, or of the enactment or adoption of the initiated law, either by the Legislature or by the people.

As to the former question our Supreme Judicial Court has already spoken in the analogous case of an Act the operation of which has been suspended by the filing of referendum

petitions. In such a case the Court has said that the right of the voters to pass upon the Act is absolute and cannot be abridged by further action of the Legislature. Subject to the constitutional provision that when an act is initiated the Legislature may submit it to the electors unless enacted "without change" with an amended form, substitute or recommendation so that the people may choose between the competing measures or reject both, it seems clear that the petitions now before you, unless the Court advises otherwise for reasons hereafter discussed, or unless the Legislature enacts it "without change", require the submission of the initiated act to popular vote.

The question of the effect of the enactment of the initiated law or its adoption by the people is one which, it seems to me, can only be decided by our Courts. The title and text of the initiated measure show that it was the intention of the initiators to enact a bill that would change the provisions of an act entitled "An Act Appropriating Moneys for Overdrafts Already Incurred Due to Insufficient Appropriations and Anticipated Overdrafts and Other Obligations for Which no Legislative Appropriations Have Been Made" which was passed by this Legislature as an emergency measure, signed by the Governor, and became effective on February 25, 1937." The title of the initiated bill erroneously describes this act as "Chapter 15 of the Public Laws of 1937". The Secretary of State informs me that this act is now designated and identified in his records as "Chapter 15 of the Private and Special Laws of 1937", and that "Chapter 15 of the Public Laws of 1937" is a designation given to an act passed by this Legislature entitled "An Act

Relating to Practice of Optometry defined" which was signed by the Governor on March 3, 1937, and which will become effective 90 days after the adjournment of the Legislature. In the text of the initiated act, the act sought to be changed is identified solely as "Chapter 15 of the Public Laws of 1937", which as already noted is an erroneous description. Our Court has held that the title of an act is no part of the act. The initiated bill, therefore, applies only to Chapter 15 of the Public Laws of 1937, the Optometry bill unless the Court, notwithstanding that rule, shall adjudge that where the text of an act erroneously or inadequately identifies a law sought to be amended, and where the title or other extrinsic recitals make it possible for the Court to determine the intent of its framers, such title or other recitals may be considered by the Court to identify the act sought to be changed and give effect to the legislative or popular intent. Such a question is entirely without judicial precedent and I can do no more than advise that you use the machinery which exists for securing a declaration of the Court which will clarify the matter for all time.

As to the initiated bill itself, an examination shows that it is drawn in such a manner that unless the Court is willing to read into its provisions a title which will properly identify the act at which the legislation is aimed, its enactment by the Legislature or by the people will fail entirely to carry into effect the intent of its framers.

Under the provisions of Chapter 210 of the Public Laws of 1931 the Revisor of Statutes is charged with the duty immediately after each session of the Legislature, of

distinguishing Private and Special Laws from the Public Laws, a duty which previous to the enactment of this chapter was performed by the Secretary of State and there is no duty placed upon any official to distinguish between Public Acts and Private and Special Acts prior to the adjournment of the Legislature.

Where it is desired to amend or repeal an act of the Legislature prior to the adjournment of the session at which it is enacted it seems to me that the correct way to designate the act sought to be changed should be by using the complete title and a reference to the date on which such act was approved by the Governor.

In view of the expense of a Special Election, which must be called by the Governor to vote upon this initiated bill in the event that it is not enacted by this Legislature, and because the question involved is one which should be judicially determined, I respectfully suggest that an advisory opinion under the provisions of Section 3 of Article VI of the Constitution, be sought by this Legislature of the Supreme Judicial Court as to, (1) whether the intent of a measure, if it can be determined either from the title or the text of the measure, can be read into it in order to identify the particular legislation it is intended to repeal or amend, and (2) if the answer to the first question is, No, whether the mandatory provisions of Section 18 of Article XXXI of the Constitution require the Legislature to submit to the people for adoption or rejection a proposed act which, as worded, will not accomplish if enacted or adopted the purpose for which it was initiated.

Respectfully submitted,
Franz U. Burkett, Attorney General

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