

MAINE STATE LEGISLATURE

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June 11, 1963

Honorable Edwin Smith
House of Representatives
State House
Augusta, Maine

Dear Ed:

I gather you want my thoughts on the proposed new draft of L.D. 1495 - an amendment of Article IV, Part First, relating to apportionment of the House of Representatives, in light of Baker v. Carr 369 U.S. 186.

The case of Baker v. Carr means little with respect to a specific apportionment measure. The principal holding of the case was that the federal courts could take jurisdiction in the field of state legislative apportionment if that state apportionment was invidiously discriminatory or so irrational as to violate the equal protection clause of the 14th amendment. The court did not attempt to suggest what might be a proper or fair apportionment nor did it define "invidious discrimination." In effect it gave to the individual voter a judicial remedy not heretofore considered.

In my opinion, the present constitutional provision limiting to 7 the number of representatives allotted to any one community and the provision of fractional excesses favoring small counties, might well be considered invidiously discriminatory in light of Baker v. Carr and subsequent state and federal court decisions. The proposed redraft does away with both provisions and to that end accomplishes much.

I see nothing improper or "irrational" in the provision (§ 3) which apportions according to the proportion of population of a county in relation to the state population. This is language similar to that now contained in the constitution.

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The last paragraph of section 3 is, of course, completely new. This provision, whereby apportionment is accomplished by the Supreme Judicial Court if the legislature fails to act, is unusual and probably not to be found in any other state constitution or public law.

It is interesting to note the recommendations of the Advisory Commission on Intergovernmental Relations in its report of "Apportionment of State Legislatures."

The Commission "recommends that the State courts be constitutionally provided with appropriate jurisdiction and remedies to insure that State officials comply with their apportionment responsibilities." And further, "The actual apportionment of a State Legislature . . . should be accomplished by the legislative or other specified nonjudicial body or officer State and Federal courts should confine their role to insuring that such nonjudicial body or officer promptly produce a reasonable apportionment meeting constitutional requirements, and urges both State and Federal courts to avoid, except in the most extreme circumstances, the prescription by judicial decree of specific apportionment formulas or the geographic composition of legislative districts."

The court, of course, is the reviewing body but probably some specified group such as the governor and certain named department heads, or the governor and a citizens group, should be more appropriately the body to actually apportion if the legislature fails to do so.

I hope this will be of some assistance.

Sincerely yours,

Frank E. Hancock
Attorney General

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