

MAINE STATE LEGISLATURE

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January 16, 1964

Honorable Frank S. Rand
House of Representatives
Augusta, Maine

Dear Mr. Rand:

Re: Authority of Legislature to Create an Interim Investigatory Committee by Joint Order.

FACTS:

A joint order may be presented to the Special Session of the 101st Legislature. The proposed joint order creates an interim committee of legislators to investigate into and cooperate with similar committees of other New England states to determine the feasibility of establishing a New England Railroad Authority to take over by condemnation proceedings, or otherwise, all railroad facilities in New England for the purpose of operating the same, as to both passenger and freight, on a subsidy basis. The committee to have subpoena power; to receive \$50 per day and their actual expenses; to employ expert and professional advisors and counsel and clerical assistance; to make a report to any regular or special session of the Legislature; and \$50,000 is appropriated to carry out the purposes of the order.

QUESTION:

May the legislature create an interim investigatory committee by Joint Order?

ANSWER:

No, in part.

REASONS:

This question appears to be one that has not been previously answered by this office or by the Supreme Judicial Court of this state. It is a question which may have been answered in several states. (In all the cases cited below the phrases "joint resolution" or "concurrent resolution" are used. In none of the cases has the phrase "joint order" been used. Whether there is a difference between a "joint or concurrent resolution" as used in these cases and a "joint order" as used in the Maine legislature, it is not possible to find out. The cases themselves do not answer that question.)

There is a definite split of authority on the subject. In the short time needed to answer this question it has not been possible to read every case thoroughly and to analyze the actual differences in the factual situations, as well as the constitutional provisions in the various states passing upon the question.

The cases which have been cited as stating that a Joint Resolution may be used for such a purpose are:

In re Davis, 49 P. 160 (Kan.); People ex rel Hastings v. Hofstadter, 180 N.E. 106 (N.Y.); People v. Backer, 185 N.Y.S. 459 (N.Y.); Commercial & F. Bank v. North, 23 S.E. 160 (N.C.); State ex rel Robinson v. Flunt, 191 P 2d 241 (Wash.); Opinion of the Justices, 29 So. 2d 10 (Ala); Jones v. Atterbury, 300 S.W. 2d 806 (Mo.). In some of these cases the joint resolution was signed by the Governor. In one or two there was money appropriated by a separate act for use of the committee.

Some of the cases supporting the theory that a Joint Resolution cannot grant such authority are:

Dickinson v. Johnson, 176 S.W. 116 (Ark.); Fergus v. Russel, 110 N.E. 130 (Ill.); Swing v. Riley, 90 P. 2d 313 (Cal.); Gilbreath v. Willett, 251 S.W. 910 (Tenn.).

Perhaps the general question asked should be rephrased to read: "Is a joint order the proper method to accomplish the purposes sought?" The answer to this would be "No."

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This order seeks to establish an interim committee composed of members of the legislature to cooperate with similar groups or with officials of other New England states to examine witnesses, records, take testimony and do all necessary fact gathering acts to make a determination. The report may be made to "any regular or special session of the legislature or to the Governor." As there will be no "regular session" of the 101st Legislature, it must be interpreted as meaning a continuing committee. This would require an act, bill or resolve.

The power to issue subpoenas might possibly be given by joint order to a legislative committee which is to function during a session of the legislature. This is, as of now, an unresolved question in this state. It would appear to be the better reasoning that such power cannot be given a continuing committee of the legislature except by an act, bill or resolve.

If a witness failed to answer a subpoena or to answer questions, it would then be necessary to take one of two courses. The committee might apply to the courts for a citation for contempt or ask the Governor to call a special session of the legislature for the purpose of having a legislative citation issue. In either event, the question of the validity of a joint order would be in question. It is the belief of this office that the court would rule that the legislature had attempted to use a joint order to accomplish a purpose "having the force of law" which must be by an act, bill or resolve. Article IV, Part Third, section 2, Constitution of Maine.

In addition, it should be pointed out that the provision concerning payment of \$50 a day and actual expenses of the members of the committee is certainly not possible. Expenses of legislators at daily sessions may not be authorized by a joint legislative order. Opinions of the Justices, 148 Me. 328 @ 331. Increased compensation of members of current legislature may not be provided by either joint order or act. Opinions of the Justices, 152 Me. 302 and 159 Me. 77.

Very truly yours,

George C. West
Deputy Attorney General

GCW:H