

MAINE STATE LEGISLATURE

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February 12, 1965

Honorable Dana W. Childs
Speaker of the House
State House
Augusta, Maine

Dear Dana:

Re: Number of Votes Required by Article X, Section 4,
Constitution of Maine

FACTS:

Article X, Section 4, Constitution of Maine, provides that the legislature, whenever two-thirds of both houses shall deem it necessary, may propose amendments to the Constitution.

QUESTION:

Does the required number of votes mean two-thirds of the members of each house present and voting, providing there is a quorum of each house present?

ANSWER:

Yes.

OPINION:

The United States Supreme Court has held that the word "House", as used in the Constitution, means a quorum of its membership, and that the two-thirds vote in each house, which is required in proposing a constitutional amendment, is a vote of two-thirds of the members present, assuming the presence of a quorum, and not a vote of two-thirds of the entire membership.

Missouri Pacific Railway Co. v. Kansas, 248 U.S. 276

National Prohibition Cases, 253 U.S. 350

The Pocket Veto Case, 279 U.S. 655

State courts have universally applied this rule.

Opinion of Justices, (Ala.) 152 So. 902

Warnock v. Lafayette, 4 La. Am. 419

Zeiler v. Central Railway Co., (Md.) 35 A. 932

Kay Jewelry Co. v. Board, (Mass.) 27 N.E. 2d 1

Southworth v. Palmyra, etc., Railway, 2 Mich. 287

State v. Gould, (Minn.) 17 N.W. 276

Green v. Weller, 32 Miss. 650

State v. McBride, 4 Mo. 303

North Platte v. North Platte Water Works, (Neb.) 76 N.W. 906

English v. State, 7 Tex. App. 171

See: Mason's Legislative Manual, Sec. 512

Strengthening this conclusion is the provision in Article IV, Part 3rd, Section 16, Constitution of Maine, requiring "a vote of two-thirds of all the members elected to each house" for emergency legislation. The intent of the framers of the Constitution to apply different vote requirements in the two sections above cited becomes apparent when it is considered that the people have the right to vote upon a constitutional amendment; whereas, by enacting an emergency law, the legislature takes away the right of the people to vote upon it by referendum.

Very truly yours,

Richard J. Dubord
Attorney General