

MAINE STATE LEGISLATURE

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November 3, 1966

Honorable Richard Broderick
Chairman, Executive Council
State House
Augusta, Maine

Dear Mr. Broderick:

This is written in answer to the request made to me by the Executive Council for a ruling on the authority of the Governor to adjourn the November 2, 1966 meeting of the Council. As I understand it, without motion from any member of the Council, the Governor declared the meeting adjourned and left the Council Chamber.

Article V, Part Second, of the Maine Constitution, provides for the Executive Council. Section 1 of the Article states that the Council shall advise the Governor in the executive part of government. It further provides that the Governor alone has the full power at his discretion to assemble the Council and that he and a majority of the Councillors shall from time to time hold and keep a council for "ordering and directing the affairs of the State according to law."

It seems clear from this section that while the Governor alone can call the Council into session, once assembled the procedure of the Council must be according to law. There being no other constitutional or statutory provisions specifically establishing procedures for the conduct of the business of the Governor and Council, it is my opinion that they must be conducted in accordance with well-established legal parliamentary procedures. Indeed, I am sure that this has always been the custom in disposing of the Council's business.

It is stated in 37 American Jurisprudence, page 672, that "the presiding officer of a legislative assembly has no power arbitrarily to declare an adjournment of a meeting thereof without the consent of a majority of the members"

This seems clearly to be the general rule. I have consulted various standard works on parliamentary procedure, included among others, "Reed's Parliamentary Rules", "Robert's Rules of Order", "Sturgis Standard Code of Parliamentary Procedure", and they universally state that a motion to adjourn must be made by a member and entertained by the presiding officer and that a meeting cannot be adjourned unless it is the will of the majority, except in rare instances not here pertinent; such as riot or disaster, for example.

"Mason's Manual of Legislative Procedure" is a reference work which has been in use by the Clerk of the Maine House for many years for guidance in making decisions on parliamentary disputes. In section 209, it is stated, "The presiding officer cannot arbitrarily adjourn a meeting." The handbook cites a Massachusetts case in which the president of a council left the council chamber immediately after a doubt was raised as to the result of a vote on a motion to adjourn without resolving the doubt by recounting the votes. The court held that under such circumstances the members could choose a temporary presiding officer in any reasonable way in order to resolve the doubt raised.

In view of the foregoing, it is my opinion that the November 2 session of the Council was not properly adjourned and that the Council is still in session until properly adjourned on motion by majority vote in accordance with universally accepted procedures.

Yours respectfully,

Richard J. Dubord
Attorney General

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