

# MAINE STATE LEGISLATURE

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February 15, 1972

Honorable Larry E. Simpson  
House of Representatives  
State House  
Augusta, Maine

Re: L.D. #2009 Resolution Proposing an Amendment to the  
Constitution to Abolish the Executive Council and Make  
Changes in the Matter of Gubernatorial Appointments  
and Their Confirmation.

Dear Larry:

You have asked this office three questions.

1. Is the Executive Council a part of the Executive  
or Legislative Department?

2. Would the proposed Legislative Council be a part  
of the Executive or Legislative Department?

3. Is the proposed constitutional amendment in viola-  
tion of Article III, section 2 as related to separation of  
powers?

Answers:

1. The Executive Council is a part of the Executive  
Department. The Constitution of Maine, Article V, Part  
Second, Section 1 reads:

"There shall be a Council, to consist of seven  
persons, citizens of the United States, and  
residents of this State, to advise the Governor  
in the executive part of government, whom the  
Governor shall have full power, at his discre-  
tion, to assemble; and he with the Councillors,  
or a majority of them may from time to time, hold  
and keep a Council, for ordering and directing the  
affairs of state according to law." (Emphasis  
supplied)

The Justices of the Supreme Judicial Court in Opinion of the Justices (1881), 72 Me. 542 stated that the Executive Council is part of the executive power and specially created to advise the Governor in a portion of the executive department of government.

2. The proposed Legislative Council would be a part of the executive department. The duty of the Legislative Council is to advise the Governor in matters of appointments. "Appointments belong to the executive part of government." Opinion of the Justices, supra.

3. Is the proposed constitutional amendment in violation of Article III, section 2 as related to separation of powers?  
No.

Article III, section 1 divides the powers of government into three departments, the legislative, executive and judicial. Section 2 forbids a person belonging to one of these departments from exercising any of the powers properly belonging to either of the others, "except in the cases herein expressly directed or permitted" (emphasis supplied).

The fact that the Legislative Council is composed of members of the Legislature and performs acts in the executive department does not violate the separation of powers provision quoted supra. The exception clause of Article III, section 2 relates to provisions appearing within the Constitution and expressly giving a person or persons belonging to one department authority to perform functions in one or more of the other two departments. The Legislative Council would be a "case(s) herein expressly directed or permitted."

Sincerely,

James S. Erwin  
Attorney General