

# MAINE STATE LEGISLATURE

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JON A. LUND

XXXXXXXXXX

1973

January 12, 1973

Honorable Richard D. Hewes  
Speaker of the House of Representatives  
State House  
Augusta, Maine 04330

Re: An Act Relating to Inherent Managerial Functions under the  
Municipal Employees Labor Relations Law (H.P. 1531) (L.D. 1974).

Dear Richard:

This is a response to your January 10, 1973 letter asking whether the House of Representatives of the 106th Legislature may legally act on the Governor's veto of the Bill in question. The question is answered in the affirmative.

Your letter recited the following facts: The above-named Bill was enacted by both Houses of the 105th Legislature at Special Session. On the last day of that Session, March 10, 1972, the Speaker of the House and the President of the Senate signed the Bill and transmitted it to the Governor. The Governor did not sign it before the Legislature adjourned. The 106th Legislature convened on January 3, 1973. The next day, the Governor returned the Bill to the House of Representatives accompanied by a veto message. On the next legislative day, January 9, 1973, the veto message was on the House calendar. The veto message was read and placed on file. The matter is tabled until January 16, 1973.

The Constitution of Maine, Article IV, Part Third, § 2, reads as follows:

"Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary, except on a question of

adjournment, which shall have passed both Houses, shall be presented to the Governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the House, in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it. If after such reconsideration, two-thirds of that House shall agree to pass it, it shall be sent, together with the objections, to the other House, by which it shall be considered, and, if approved, by two-thirds of that House, it shall have the same effect, as if it had been signed by the Governor: but in all such cases, the votes of both Houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journals of both Houses respectively. If the bill or resolution shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it unless the Legislature by their adjournment prevent its return in which case it shall have such force and effect, unless returned within three days after their next meeting." (Emphasis supplied.)

The provision of the Constitution of Maine quoted above authorizes the Governor to disapprove (veto) bills or resolutions having the force of law. A constitutional provision to the effect that a bill shall not become law until presented to the executive for his approval or veto is mandatory. Opinion of the Justices (Me., 1967), 231 A.2d 617. Too, constitutional provisions for the return of bills that have been presented to the Governor, by the executive, with his approval or veto, within a certain time after presentment, or within an extra period where adjournment intervenes, are mandatory. In re Opinion of the Justices, 334 Mass. 765, 138 N.E.2d 212; Opinion of the Justices, 353 Mass. 785, 229 N.E.2d 715; Opinion of the Justices, 103 N.H. 402, 174 A.2d 420.

It seems clear from a reading of the above-quoted constitutional provision that the Governor shall return any vetoed bill to the Legislature while in session. This is so because adjournment of the Legislature prevents executive return of a bill (" \* \* \* unless the Legislature by their adjournment prevent its return \* \* \* ").

What was the "next meeting" of the Legislature at which the Governor could legally return the reference Bill with an attached veto message? Under the stated facts, the "next meeting" of the Legislature occurred when the 106th Legislature convened. Any interpretation restricting the Governor's return of the disapproved Bill to the Legislature that enacted the measure, here the 105th Legislature, has the result of requiring the Governor, in such instances, to reconvene the lawmakers, for, as here, the singular purpose of returning a bill to them.

Unless the subject Bill is legally before the 106th Legislature for action on the Governor's veto, under the given facts, serious ramifications can obtain to the legislative process. For example, suppose the Governor intended that the Bill in question become law without his signature. Assume no other change in the facts. Since the Legislature legally performed its constitutional duty when enacting the measure, the Bill should become law in the absence of executive disapproval. Yet, under such a hypothetical situation, if the convening of a "new" Legislature expunged such a pending bill of the former Legislature, the legislative process would be frustrated because the Act could not become law.

In Woessner v. Bullock, 176 Ind. 166, 93 N.E. 1057, the words "at its next session", appearing in the Indiana Constitution, authorizing the Legislature to pass bills over the Governor's veto, and providing that, when the Governor within five days after the adjournment of the Legislature vetoes a bill and files it in the office of the Secretary of State, the latter shall lay the same before the Legislature "at its next session" meant the first session following thereafter, whether regular or special. We interpret the words, "their next meeting", in Art. IV, Part Third, § 2 of the Maine Constitution, in the same fashion.

Although we find no Maine case on the subject, in Arnold v. McKellar, 9 S.C. 335, the Court construed the words "their next meeting", in a constitutional provision declaring that if a bill were not returned by the Governor within 3 days after presentation to him, it should have the same force and effect as if he had signed it, unless the Legislature, by adjournment, prevented its return, in which case it should not have such force and effect "unless returned within two days after their next meeting", as meaning the next regular annual session. The Court in that case, while interpreting language identical to that considered here, not consider as controlling the fact that a "new" legislature convened.

Page 4

We therefore answer that the 106th Legislature may legally act on the Bill in question.

Very truly yours,

JON A. LUND  
Attorney General

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