

MAINE STATE LEGISLATURE

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December 19, 1973

Honorable Kathleen Watson Goodwin
848 Washington Street
Bath, Maine 04530

Dear Representative Goodwin:

This will acknowledge receipt of your letter of December 5 asking for an opinion of this office as to the legal and constitutional implications of an advisory referendum on the Equal Rights Amendment. The first problem is:

"The invalidity of such a vote in view of the U. S. Constitution's expressed restrictions on the methods of ratification. I believe there is a reference to this in the Revised Statutes Annotated in regard to a Maine Supreme Court ruling."

The answer is the Federal Constitution sets out two methods to ratify a Federal Constitutional Amendment. First, by vote of the legislature and second, by a Constitutional Convention held within the State. I believe this was answered by the Supreme Judicial Court of Maine in an Opinion of the Justices, 118 Me., page 544. I am attaching hereto pages 544 and 545. It is my belief that the passages which are marked answer this particular problem. I am also attaching an excerpt from an Opinion of the Justices in 132 Me. pages 497 and 498. The particular part is question 6 and the answer thereto.

The second problem is as indicated in your letter as follows:

"An interpretation of Article IV, Part Third, Section 19, of the Maine Constitution, which states that any measure referred to the people and approved by a majority of the votes given thereon shall... take effect and become law. Does this section make an advisory referendum impossible

or would the invalidity of the vote with respect to the U. S. Constitution render such a vote advisory only since the U. S. Constitution is supreme?"

The preceding answer and attached copies indicate that it is a decision for the legislature as to whether or not it will approve a proposed amendment to the Constitution. A referendum, whether advisory or not, has no legal effect upon the legislature. I am also enclosing pages 549 and 550 of 118 Me. which discuss in a general way the fact that the initiative and referendum amendment to the Maine Constitution is not applicable to amendments to the Federal Constitution.

Your third problem is expressed as follows:

"Does there in fact exist a constitutional mechanism for a statewide advisory referendum, or would the Maine Constitution itself have to be amended to allow for such a referendum?"

I can find no provision in the Constitution or in the statutes for a statewide advisory referendum. There is a provision in Article IV, Part Third, Section 18, which states, "The legislature may order a special election on any measure that is subject to a vote of the people." That, however, does not refer to an advisory referendum, but only to such measure to which the legislature may attach a referendum in order for the people to actually enact the bill.

It would be my opinion that the legislature by proper enactment could set up an advisory referendum procedure. Please note Article IV, Part First, Section 1, and Article IV, Part Third, Section 1, which indicate that the law-making power has been given by the people to the legislature. Law-making decision has become the legislature's duty and for it to refer to the people a request for advice as to legislation would require legislation.

The fourth question that you have asked is as follows:

"Is there any precedent in Maine history for a statewide advisory referendum?"

I know of no precedent in Maine history for a statewide advisory referendum and have been unable to find any precedent. I have been referred to P.L. 1858 C. 50. However, I read that Act as setting up a referendum giving the people a choice between two Acts; their vote to determine the Act to be law. It does not appear to be advisory.

If I can be of any further help, I will be very pleased to assist you.

Yours very truly,

Jon A. Lund
Attorney General

JAL:H - CCW
Enclosure