

MAINE STATE LEGISLATURE

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January 17, 1975

Peter M. Damborg, Governor's Staff

Executive

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Attorney General

Legal authority of the Executive Council

In response to your recent inquiry under date of January 10, 1975, submitted to this Office, it would appear that the Executive Council, acting to confirm appointments by the Governor pursuant to the terms of Article V, § 8 of our Constitution, has authority to conduct public hearings for the purpose of obtaining information relating to the qualifications of said nominees. As to those particular hearings, the Governor need not chair such sessions, and he need not have convened them.

Upon examination of the Constitution and laws of Massachusetts, the only other jurisdiction, with the exception of New Hampshire, with an executive council form of government similar to that of the State of Maine, one finds clear-cut authority to support the proposition that the Executive Council may initiate fact finding hearings in order to formulate its advice regarding Gubernatorial action.

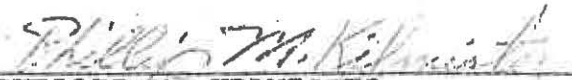
The Supreme Judicial Court of Massachusetts has ruled that the Executive Council may initiate and hold hearings, as a means of gathering information upon which to formulate an opinion, precedent to giving its advice and consent to the Governor in regard to the appointment and removal of public officers.

"Under statute providing that public officer, if appointed by Governor with the advice and consent of council, may be removed by Governor for cause, with council's advice and consent, the words 'advice and consent' do not infer that before giving or refusing its sanction the council is compelled to hold hearings and to listen to the testimony of witnesses, but the council may adopt any reasonable methods of forming a proper judgment on the matter before it, including the holding of a hearing at which witnesses are called." (emphasis supplied) Murphy v. Casey, 300 Mass. 232, 15 N.E.2d 268 (1938).

The Murphy case is not necessarily binding upon a Maine Court, but it does constitute firm authority for the proposition that the Executive Council in this State may, on its own initiative, conduct investigatory hearings in order to obtain knowledge upon which to render advice to the Governor, by way of consent or rejection.

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In my opinion, the conduct of an investigatory hearing solely to obtain information relating to the appointment of gubernatorial nominees, is a reasonable and proper means for the Council, acting on its own initiative, to exercise its delegated Constitutional power of rendering advice to the Governor.


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