

MAINE STATE LEGISLATURE

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September 30, 1975

H. Sawin Millett, Jr., Commissioner

Educational and Cultural Services

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Attorney General

Certification of Total Education Costs

Your memorandum of September 9, 1975, contained two questions concerning the certification procedure for education costs contained in Chapter 272 of the Public Laws of 1975. The procedure is set forth in the statute (36 M.R.S.A. § 451) as follows:

"The Commissioner of Educational and Cultural Services, with the approval of the State Board of Education, shall annually, prior to January 15th, certify to the Bureau of the Budget the total education costs as defined. The Bureau of the Budget shall forthwith certify said sum to the Legislature with the recommendation of the Governor. The Governor's recommendation may be either to reduce, increase or to approve said sum as certified. The Legislature shall annually, prior to April 1st, certify by joint order the amount which it deems reasonably necessary for the support of public education to the State Director of Property Taxation. If the Legislature fails to act, the Governor's recommendation shall automatically be certified to the State Director of Property Taxation."

Your first question is, "Must the Legislature be in session to receive the certification from the Bureau of the Budget?" The answer to this question is negative. However, the Legislature must be in session to act upon the certified amount, as contemplated by 36 M.R.S.A. § 451.

There is some authority for the proposition that the Legislature exists as an entity only when both houses are convened and organized as such. Simpson v. Hill, 263 P. 635 (Okla., 1927); Ex parte Hague, 147 A. 220 (N.J., 1929). In this case there would be no "Legislature" to which a certification could be tendered, if the houses were not in session. However, the more prevalent view, and the view which is more realistic in light of the ongoing functions of current legislatures, is that the official life of a legislative body is measured by the term of its membership. In re Opinion of the Justices, 133 N.E. 452 (Mass., 1921); State v. Patterson, 251 P.2d 123 (Ore., 1952); State v. Atterbury, 300 S.W.2d 806 (Mo., 1957). Although Maine courts have

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not had occasion to decide this issue, it is probable that the latter view would be adopted, considering constitutional provisions which state a fixed term of office for Senators (Section 1, Part Second, Article IV); and Representatives (Section 2, Part First, Article IV); provide for filling vacancies in both houses (Section 6, Part First, Article IV and Section 4-A, Part Second, Article IV); and allow for convention of the Legislature, other than for the biennial session, by the Governor (Section 13, Part First, Article V) or at the call of the President of the Senate and Speaker of the House (Section 1, Part Third, Article IV). Therefore, it is our opinion that the Legislature exists as an entity even when it is not in session and it would not have to be in session to receive the Certification of total education costs from the Bureau of the Budget. The certification would be presented to the Clerk of the House and the Secretary of the Senate.

Although the Legislature may receive the certification without being in session, it could not consider the action required by section 451 while in that status. A Missouri court, when considering legislative existence and powers, stated:

"It is more proper to say that the General Assembly always exists as the depository of the legislative power of state government, but that its right to function in a legislative way is limited to the time when it is in regular or special session." State v. Atterbury, 300 S.W.2d 806 (Mo., 1957).

Section 451 specifically provides that legislative certification of the amount for educational support shall be by joint order. Since such action would be legislative, affecting as it does the tax rate, and since a "joint order" could only be passed by the assembled houses, the statute contemplates that the Legislature be in session for this action.

Your second question is, "What is a reasonable interpretation of the word 'forthwith' in terms of an allowable time span between [your] certification to the Bureau of the Budget and their (Bureau of the Budget) certification to the Legislature?" This question cannot be answered by stating a specific number of days because there is no precise definition of the word in this sense. The meaning of "forthwith" in any specific case depends upon the act to be performed and the circumstances surrounding the performance. Lewis v. Curry, 103 P. 493 (Cal., 1909).

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Black's Law Dictionary defines "forthwith" as follows:

"Immediately; without delay, directly, hence within a reasonable time under the circumstances of the case; promptly and with reasonable dispatch. Within such time as to permit that which is to be done to be done lawfully and according to the practical and ordinary course of things to be performed or accomplished. The first opportunity offered." (citations omitted)

Part of this definition is taken from Harris v. Stewart, 193 So. 339 (Miss., 1940), wherein it is stated:

"The term 'forthwith' is a relative one and means within such time as to permit that which is to be done to be done lawfully and orderly and effectually according to the practical and ordinary course of the thing or things to be performed or accomplished. . . ."
". . . the circumstances of each particular case should govern, -- although requiring all reasonable diligence and dispatch, yet this shall be in view of all the facts and circumstances with which the party has been encumbered." 193 So. 339 at 342.

These definitions should be used for guidance in situations like the one under consideration, where an official or agency is required to perform some act "forthwith," but certain preliminary action is necessary.

Section 451 provides some clue as to what might be considered "forthwith" performance by the Bureau of the Budget. Assuming that you did not give your certification to the Bureau until the last moment - January 14th, the Bureau would then have to take appropriate action to review the certified amount, submit it to the Governor for his recommendation, and certify the amount and recommendation to the Legislature in sufficient time for legislative action prior to April 1st. In other words, the process would have to be completed within approximately two and a half months. These statutory constraints are facts which would have to be considered along with other facts and circumstances in applying the guidelines stated above. Therefore, we cannot state a specific allowable time-span within which certification by the Bureau of the Budget would be considered "forthwith."

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Assistant Attorney General

SKS:mfe

cc: Honorable James B. Longley