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Me CONST Art 4 Pt 3 sec 3
House: Control of Seating of Members
Electoral Control By House

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January 4, 1976

Honorable John L. Martin
Speaker of the House
State House
Augusta, Maine

Re: Election Challenge Procedures.

Dear Mr. Speaker:

This responds to your request for an opinion as to the proper procedures in processing challenges to the seating of House members as a result of election disputes.

The Maine Constitution, Art. IV, Part Third, Section 3, specifies that:

"Each House shall be the judge of the elections and qualifications of its own members."

Traditionally, in furtherance of this provision, the House has appointed a Committee on Elections. Provision for this Committee is made in Section 6 of the Rules of the House for the 107th Legislature which specifies that the Committee on Elections is a standing committee of the House, appointed by the Speaker, and consisting of 7 members. Its duties are to consider all subjects referred to it and to report thereon to the House. In the past the House has referred election reports from the Secretary of State, petitions challenging elections and other election disputes, where they occurred, to this Committee. The Committee has then reported back to the House with the recommending adoption of the election results as transmitted by the Secretary of State, Legislative Record, House, 105th Legislature, January 6, 1971, pp. 7-11, January 7, 1971, p. 29;

Legislative Record, House, 104th Legislature, January 1, 1969, pp. 7-8, January 2, 1969, p. 29; or recommending changes in results, or that questions be posed to the Supreme Judicial Court, Legislative Record, House, 100th Legislature, January 17, 1961, p. 123, 102nd Legislature, January 14, 1965, p. 94-95; 103rd Legislature, January 18, 1967, p. 104-105. These recommendations for request for opinion to the Supreme Judicial Court have been adopted.

The Committee has also, in the past, declared a tie and recommended a new election, Legislative Record, House, 103rd Legislature, February 2, 1967, pp. 211-213. Copies of the pages from the Legislative Record containing the 1967 Committee reports and House action thereon are attached hereto.

As part of its practice the House Committee on Elections has, on occasion, held hearings.

The statutes relating to processing of election challenges provided a recount procedure pursuant to 21 M.R.S.A. §§ 1151 through 1153 with an appeal from the recount to the Commission on Governmental Ethics and Election Practices which is authorized to review elections in accordance with procedures set forth in 1 M.R.S.A. § 1008 and 21 M.R.S.A. c. 36. Current legislation, however, makes clear that the review performed by the Commission on Governmental Ethics and Election Practices for House elections is purely advisory. Thus, 21 M.R.S.A. § 1423-3 specifies:

"A. Elections for Governor, Legislature, federal office. In cases involving elections, where the Constitution of this State or the United States Constitution provides for final determination of the election of a candidate, the commission shall transmit to the body vested with final determination powers a copy of the findings of fact and opinion."

This conforms with long-standing interpretations in Maine and elsewhere that, where the Constitution provides that the House is the ultimate judge of its own members, statutory procedures relating to election challenges which precede House consideration are purely advisory and House consideration of the matter may be de novo with whatever reliance on prevailing statutory election contest requirements that the House chooses.

"The exclusive power to judge of the qualifications and elections of its members is fixed in each House and cannot by its own consent or by legislative action be vested in any other tribunal or office." Mason, Manual of Legislative Procedures, § 560-5.

Thus, the Maine Supreme Court has held that the House's jurisdiction to judge the elections and qualifications of its own members is "exclusive and plenary," Lund ex rel. Wilbur v. Pratt, 308 A.2d 554, 560-561 (Me., 1973). Further, the House has jurisdiction to consider each case from the beginning and outside of statutory specifications relating to filing or processing of election challenges, Opinion of the Justices, 157 Me. 98 (1961); Opinion of the Justices, 143 Me. 417 (1948).

In the 1961 case, the Court held that failure to comply with statutory notice of challenge requirements did not deprive the House of jurisdiction to consider an election challenge. In the 1948 case, the Court refused to provide advice to the Governor and Council on questions relating to House elections, holding that the House was the exclusive judge of its members although the statute then in effect allowed the Governor and Council to consider ballot disputes.

It should also be noted that the exclusive jurisdiction of the House to review and consider the qualifications of its members applies not only at the convening of the Legislature, but also continues through the course of the particular Legislature, Lund ex rel. Wilbur v. Pratt, supra, at p. 561. The general exclusive authority of the House has been specifically articulated by the Supreme Judicial Court in its 1961 opinion. There the Court noted:

" * * * The Legislature may prescribe reasonable rules of conduct and procedure in resolving election contests involving its own membership, but its jurisdiction continues to rest upon the authority vested in it by the Constitution and may not be made to depend upon any technical compliance or failure to comply with such procedural knowledge of the specific authority vested by the House in its Committee on Elections either under its rules or by any special action, but for our purposes we will assume that the Committee on Elections was established to hear and determine contested cases under the provisions of R.S., Chapter 5, Section 89 as amended by P.L., 1959, Chapter 204, Section 26. In so acting the Committee on Elections stands in the place of the House in the first instance and derives its jurisdiction from that of the parent body. Final decision rests in the House to which the Committee reports. * * * ."
Opinion of the Justices, 157 Me. 98 at 102.

Further, it should also be noted that the actions of the House in judging its own members are conclusive and not subject to judicial review, Lund ex rel. Wilbur v. Pratt, supra, at 560; Mason, Manual of Legislative Procedure, § 560.^{1/}

Neither current statutes nor the Rules of the 107th Legislature provide a specific method to invoke House review of elections. In the past this review has been invoked by petition from a contesting candidate to the House (e.g., 1961 or 1967), or by review of reports from the Secretary of State (e.g., 1965, 1967). However, it would appear that the question of the appropriateness of a particular member serving could be raised in any manner which the House, in its exclusive discretion, deemed sufficient to bring the matter before it. Thus, the matter could be raised by a petition to the House from a candidate. This formerly was officially provided by statute, R.S. 1954, c. 5, § 89, but the fact that the petition method is no longer provided by statute does not prevent the House from considering such petitions, because, as noted above, the statutory methods for review were not mandatory on the House and certainly, therefore, repeal of a prior statutory review method could not be held to prevent review based on a petition of a contesting candidate.

Review may also be based on documents received from the Secretary of State or reports received from the Commission on Governmental Ethics and Election Practices as provided in 21 M.R.S.A. § 1423-3. In fact, receipt of reports of appeals from the Commission on Governmental Ethics and Election Practice appears to be a method of generating review specifically contemplated by the statute, although the statutes cannot, under the provisions of the Constitution, impose this method as the exclusive method of review.

Thus, under court and legislative precedent, the following principles may be stated which govern the processing of challenges to House elections:

1. The jurisdiction of the House is exclusive, and its decisions are not subject to court review.

2. The House is not bound, if it chooses not to be, by prior rulings of bodies created by statute to consider election appeals. Thus, if the House chooses, consideration of election challenges by the House is de novo.

3. The House may properly review election results on the basis of (a) reports received from the Secretary of State or the Commission on Governmental Ethics and Election Practices, or (b) petitions for review of elections filed by one or all of the candidates, or (c) any other presentation or challenge to seating members which the House deems appropriate.

^{1/} But see Powell v. McCormack, 395 U.S. 486 (1969).

4. The House has traditionally, at the start of each session, appointed a standing Committee on Elections and has reported election disputes to that Committee.

5. The standing Committee on Elections exercises the same powers as other House committees, including the ability to hold hearings and otherwise engage in factfinding.

6. Once the standing Committee on Elections has completed its factfinding, it reports back to the House its findings and recommendations.

7. These recommendations are voted on by the House, and the House's vote on the recommendation then becomes the determination of the qualification of the member in question.

If you have any further question on this matter, please feel free to contact me.

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

JEB/ec
Enclosure

Resolve Proposing an Amendment to the Constitution to Permit the Governor to Veto Items Contained in Bills Appropriating Money (H. P. 119) (Presented by Mr. Belliveau of Rumford)

(Ordered Printed)

Resolve Proposing an Amendment to the Constitution to Provide for Municipal Home Rule (H. P. 120) (Presented by Mr. Martin of Eagle Lake)

(Ordered Printed)

Sent up for concurrence.

Taxation

Bill "An Act Repealing Trade-In Credit for Motor Vehicles Under Sales Tax Law" (H. P. 121) (Presented by Mrs. Boudreau of Portland)

(Ordered Printed)

Bill "An Act to Increase Cigarette Tax Two Cents" (H. P. 122) (Presented by Mr. Lebel of Van Buren)

(Ordered Printed)

Bill "An Act to Remove Sales Tax Exemptions on Rentals, Repairs, Installation and Servicing of Tangible Personal Property" (H. P. 123) (Presented by Mr. Scribner of Portland)

(Ordered Printed)

Sent up for concurrence.

Transportation

Bill "An Act relating to Use of Dealer Registration Plates" (H. P. 124) (Presented by Mr. Crosby of Kennebunk)

(Ordered Printed)

Bill "An Act relating to Registration of Motor Vehicles by Blind Veterans" (H. P. 110) (Presented by Mr. Dennett of Kittery)

(Ordered Printed)

Sent up for concurrence.

House Report of Committee on Elections

The following Report:

The Committee on Elections to which was referred the petition of Peter T. Snowe of Auburn and the returns of votes and accompanying communications from the City of Auburn, having had the matter under consideration, and after hearing the evidence in the case and the argument of counsel, beg leave to report that Mr. La-

berge and Mr. Snowe have agreed that Mr. Laberge received 3,773 votes and that Mr. Snowe received 3,772 votes, and seven (7) ballots are in dispute. Three ballots are challenged by Mr. Snowe and four ballots are challenged by Mr. Laberge.

The Committee further reports that there has been no fraud of any nature or description in the casting of the votes in question. It appears, however, that the validity of all or any one of the seven (7) ballots may determine the outcome of the election and present a question of law and that the Supreme Judicial Court should be requested to give this House its opinion as to the validity of the seven (7) ballots and for whom they should be counted.

COMMITTEE ON ELECTIONS
(Signed) By HAROLD BRAGDON
Chairman

Report was read and accepted.

Tabled and Assigned

Mr. Bragdon of Perham then presented the following Order out of order and moved its passage:

WHEREAS, in connection with the proposed examination by the House Committee on Elections in the Ballots cast in the general election of November 8, 1966, for a House seat in the City of Auburn, certain questions have arisen with regard to the validity of certain ballots because of a contest for said seat by Peter T. Snowe of Auburn who contests the seating of Romeo Laberge of Auburn; and

WHEREAS, Peter T. Snowe of Auburn caused a recount to be had before the convening of the Legislature before the appropriate election officials of the State of Maine at which recount both parties were represented; and

WHEREAS, this recount resulted in an agreement between Mr. Snowe and Mr. Laberge that there were 3,773 votes cast for Romeo Laberge and 3,772 votes cast for Peter T. Snowe, and that there were seven (7) ballots in dispute, four challenged by Mr. Laberge and three challenged by Mr. Snowe, and

WHEREAS, this matter was brought to the attention of the

House of Representatives on January 5, 1967, and

WHEREAS, the House referred to the Committee on Elections for its review the question of who should have the seat in question for the city above mentioned, and

WHEREAS, Mr. Laberge and Mr. Snowe have agreed that the recounted ballots are, as far as the count above-mentioned is concerned, acceptable, and that the ballots in dispute could decide the election, and

WHEREAS, the ballots in dispute are attached hereto and made a part hereof and are identified by markings affixed to each ballot which have been placed there by officials of the State of Maine and are not considered distinguishing marks, namely, number 1 through 7, inclusive, and

WHEREAS, no evidence has been offered to the House of Representatives or to the Committee on Elections that there has been any fraud of any nature or description in the casting of the votes in question, and

WHEREAS, two of the attached ballots have write-in candidates' names written on them for specific offices, and there is appended herewith the original voting list of the City of Auburn for comparison therewith, and

WHEREAS, it appears that the reason for counting these questionable ballots one way or another must appear on the face thereof and must, therefore, be reduced to a question of law, and

WHEREAS, it appears to the Members of the House of Representatives of the 103rd Legislature that questions of law have arisen which make this occasion a solemn one:

NOW, THEREFORE, be it ordered, that in accordance with the provisions of the Constitution of the State, the Justices of the Supreme Judicial Court are hereby respectfully requested to give their opinion on the following questions:

I

Is ballot No. 1 a valid ballot?

II

If the answer to question No. 1 is in the affirmative, for whom should the ballot be counted?

III

Is ballot No. 2 a valid ballot?

IV

If the answer to question No. III is in the affirmative, for whom should the ballot be counted?

V

Is ballot No. 3 a valid ballot?

VI

If the answer to question No. V is in the affirmative, for whom should the ballot be counted?

VII

Is ballot No. 4 a valid ballot?

VIII

If the answer to question No. VII is in the affirmative, for whom should the ballot be counted?

IX

Is ballot No. 5 a valid ballot?

X

If the answer to question No. IX is in the affirmative, for whom should the ballot be counted?

XI

Is ballot No. 6 a valid ballot?

XII

If the answer to question No. XI is in the affirmative, for whom should the ballot be counted?

XIII

Is ballot No. 7 a valid ballot?

XIV

If the answer to question No. XIII is in the affirmative, for whom should the ballot be counted?

(On motion of Mr. Richardson of Cumberland, tabled pending passage under Rule 41 and tomorrow assigned.)

Orders of the Day

Mr. Richardson of Cumberland was granted unanimous consent to briefly address the House.

Mr. RICHARDSON: Mr. Speaker, Ladies and Gentlemen of the House: I should like to direct a

referred to the Committee on Health and Institutional Services.

Report was read and accepted, the Bill referred to the Committee on Health and Institutional Services and sent up for concurrence.

Referred to Committee on Towns and Counties

Mr. Birt from the Committee on Appropriations and Financial Affairs on Bill "An Act Increasing Payments to Piscataquis County Law Library" (H. P. 88) (L. D. 118) reported that it be referred to the Committee on Towns and Counties.

Mr. Dunn from same Committee reported same on Bill "An Act Increasing Payments to Sagadahoc County Law Library" (H. P. 126) (L. D. 190)

Reports were read and accepted, the Bills referred to the Committee on Towns and Counties and sent up for concurrence.

Ought to Pass Printed Bills

Mr. Nadeau from the Committee on Highways reported "Ought to Pass" on Bill "An Act to Allocate Money from the General Highway Fund for State Aid Construction" (H. P. 100) (L. D. 127)

Mr. Wood from same Committee reported same on Bill "An Act relating to Permits to Operate Heavy Motor Vehicles in Unorganized Territory" (H. P. 101) (L. D. 128)

Reports were read and accepted, the Bills read twice and assigned the next legislative day.

Report of Committee on Elections

The following Report:
The Committee on Elections to which was referred the returns of the votes cast for representative to the Legislature and the petition of Peter T. Snowe have had the same under consideration and they leave to report that:

It appears from a canvass of said returns that the several persons named in the communication to the Secretary of State addressed to Jerome G. Plante, Clerk of the House of Representatives of the 122nd Legislature and dated Jan-

uary 4, 1967 made in compliance with 3 M.R.S.A. §1 were duly elected representatives to the Legislature and should be declared to be the legal members of the Legislature with the following exceptions:

1. The return of the Secretary of State as to the representatives-elect indicated that Raymond H. Bradeen of Waterboro appeared to be elected. An amended tabulation filed by the Secretary of State indicated that in a recount it had been determined that George Carroll of Limerick had been elected to represent the Towns of Cornish, Limerick, Newfield, Parsonsfield, Shapleigh, and Waterboro; and therefore, this communication should be amended to show that George Carroll of Limerick is duly elected and a legal representative of this Legislature.

2. The Committee met and canvassed the votes cast in the City of Auburn acting upon the petition of Mr. Snowe who contested the seating of Romeo Laberge of Auburn as a representative from that city. At a hearing of the Committee both parties being represented by counsel, it was agreed that Mr. Laberge had received 3,773 votes and that Mr. Snowe had received 3,772 votes and that there were 7 ballots in dispute; 4 challenged by Mr. Laberge and 3 challenged by Mr. Snowe.

Your Committee reported the foregoing facts and requested that the House of Representatives ask the opinion of the Justices of the Supreme Judicial Court with regard to the 7 ballots in dispute. The House by appropriate order passed on January 19, 1967 forwarded certain questions to said Justices and the Justices returned their opinion on January 31, 1967: said opinion being printed in full on the House Advance Journal and Calendar dated February 1, 1967.

The opinion of the Justices indicated that out of the 7 ballots in question, it was their opinion that only 1 ballot could be counted for either candidate and the ballot that should be counted was a ballot in favor of Mr. Snowe. Your Committee after further review has determined that the vote for representative from the City of Auburn between Mr. Laberge and

Mr. Snowe is as follows: Mr. Laberge 3,773 votes and Mr. Snowe 3,773, resulting in a tie; and therefore, that there has been no choice as between Mr. Laberge and Mr. Snowe.

Your Committee recommends, therefore, that the House declare as legal members of the House all persons listed in the communication of the Secretary of State made in compliance with 3 M.R.S.A. §1 dated January 4, 1967 except Raymond Bradeen who has conceded that George Carroll was duly elected and that the House declare George Carroll of Limerick to be the representative elected in the class towns of Cornish, Limerick, Newfield, Parsonsfield, Shapleigh and Waterboro; and with the further exception that the House declare that there is a vacancy in the representation in the House of the City of Auburn because of the failure of the voters of said city to elect a fourth member to the House and that the name of Romeo Laberge presently seated as the fourth member of the House of the City of Auburn be stricken from the rolls.

COMMITTEE ON ELECTIONS
(Signed) HAROLD BRAGDON
Chairman

Report was read. On motion of Mr. Bragdon of Perham, the Report was accepted, its recommendations adopted, all persons listed in the communication of the Secretary of State made in compliance with 3 M.R.S.A., Sec. 1, were declared as legal members of the House, with the exception of Romeo Laberge of Auburn; and except that George Carroll of Limerick is declared to be the member of the House representing the class towns of Cornish, Limerick, Newfield, Parsonsfield, Shapleigh and Waterboro.

Order Out of Order

Mr. Richardson of Cumberland presented the following Order out of order and moved its passage:

ORDERED, that the House of Representatives declare a vacancy to exist in the representation in the House of the City of Auburn because of the failure of the voters of said city to elect a fourth

member to the House to which said city is entitled by law, and be it further

ORDERED, that a copy of this Order duly certified by the Clerk of the House be sent to the Governor, the Secretary of State and the Mayor of the City of Auburn in which the vacancy exists, and be it further

ORDERED, that the name of Romeo Laberge presently sitting in this House as a representative from the City of Auburn be stricken from the rolls.

The SPEAKER: The Chair recognizes the gentleman from Cumberland, Mr. Richardson.

Mr. RICHARDSON: Mr. Speaker, Ladies and Gentlemen of the House: In support of the passage of this Order, I would like first of all to commend the Committee on Elections which has faithfully discharged the duties which fell upon it. It, as you know, referred the question of the petition of Peter Snowe to the Supreme Judicial Court of the State of Maine for opinion. The Opinion of the Justices having been returned, it is their opinion that there was a tie as a result of this election.

This order is designed to put in motion at this time the machinery necessary to permit a runoff election in the City of Auburn for the seat. In order to have you understand the possible alternatives that we might have taken, I first want to indicate to you that each of these men, Peter Snowe and Romeo Laberge, has an equal right to the seat. The question is, how should this right be determined?

By a flip of the coin? We would say no, because in so would be a cynical denial of the right of the people to select the representative they wish to represent them. While it may be that the membership of this House has the power to decide its own membership, that is, to seek one or the other of these men, I don't feel that it's appropriate and I hope no one in this House feels that it is appropriate. This is a decision to be made by the people of the City of Auburn in a special election called for that purpose.

We have followed an impartial course, a non-political course, throughout the entire handling of this matter and I would urge the House today to follow this same course and pass this order. And finally may I say that I view this, and as I know the members of the majority party do, an act of fairness to all concerned, particularly to Mr. Laberge and Mr. Snowe. Thank you.

Thereupon, the Order received passage.

The SPEAKER: Pursuant to the passage of this Order, the Chair will declare the vacancy to exist in the representation in the House of the City of Auburn and that the name of Romeo Laberge be stricken from the rolls.

Passed to Be Engrossed

Bill "An Act relating to Open Season on Otter" (S. P. 8) (L. D. 14)

Was reported by the Committee on Bills in the Third Reading, read the third time, passed to be engrossed and sent to the Senate.

Finally Passed Emergency Measure

Resolve Relating to Repairing Training Vessel at Southern Maine Vocational Technical Institute in South Portland (H. P. 24) (L. D. 45)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 129 voted in favor of same and none against, and accordingly the Resolve was finally passed, signed by the Speaker and sent to the Senate.

Orders of the Day

Mr. Levesque of Madawaska was granted unanimous consent to briefly address the House.

Mr. LEVESQUE: Mr. Speaker and Ladies and Gentlemen of the House: I think probably this morning the majority party of this august body could be commended on the action taken in referring the election of a House

of Representative seat back to the electorate for a final decision. I think this is probably an historical moment in our state and in this branch of the Legislature and also a commendation of the Committee on Elections for their action that they have taken. I think this befits our state and it befits this group, that the decision reached by this House this morning to give the people of this particular representative district a choice of definitely electing a person to this branch of the Legislature. So there again I commend the Elections Committee and the Majority Party for the action that was taken this morning. Thank you.

The following paper from the Senate was taken up out of order: From the Senate: The following Joint Resolution: (S. P. 241)

WHEREAS, the Members of the One Hundred and Third Legislature have learned with great sorrow of the sudden death of newly-elected Member of the Executive Council, Honorable Lewis O. Barrows, Governor of Maine from 1937 to 1941; and

WHEREAS, this act has brought to a sudden and untimely end the useful life of a loyal, a devoted and highly respected public servant of this State who gave unselfishly of his time and energy; and

WHEREAS, his immediate family stands bereft of a loving husband and father; and

WHEREAS, the Members of the Executive Council who have served with him so closely during the past few weeks feel a personal loss of his wise counsel and his warm friendship; and

WHEREAS, all of the people of the State of Maine are mourning the untimely passing of a charming and gracious man, and recall the days when the Barrows family lived in the Blaine House as some of the happiest years of public service; and

WHEREAS, history will record his beginning public life at the age of fourteen as a Senate page, later to serve on the Executive Council from 1927 to 1933, Secretary of State from 1935 to 1936, Governor of Maine from 1937 to 1941 and at