

MAINE STATE LEGISLATURE

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March 2, 1976

Honorable Bruce M. Reeves
Senate Chambers
State House
Augusta, Maine 04333

Dear Bruce:

This is in response to your letter of February 13, 1976, raising questions as to the constitutionality of those provisions of L. D. 1954 (An Act Revising Lobbyist Disclosure Procedures), which, if enacted, would give that bill retroactive effect. It is the conclusion of this Office that to the extent criminal penalties would apply to their violations, the retroactive provisions of L. D. 1954 would, if enacted, constitute ex post facto laws, prohibited by Article I, § 11 of the Maine Constitution, which states:

"The Legislature shall pass no bill of attainder, ex post facto law, nor law impairing the obligation of contracts, and no attainder shall work corruption of blood nor forfeiture of estate."

Title 3 M.R.S.A. § 323 as proposed to be enacted by L. D. 1954 imposes criminal penalties for violation of any provision of L. D. 1954. The emergency clause would make L. D. 1954 retroactive to January 19, 1976, subject to the provisions of § 2, which require actual reporting shortly after the effective date. This constitutes retroactive legislation, however, because it effectively imposes recordkeeping and report compiling obligations prior to the effective date of the law, since without records, persons may not be able to file the requisite reports.

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The Supreme Judicial Court has held that: "A retroactive provision is valid only when it relates to a remedy and not a substantive right." Dalton v. McLean, 137 Me. 4 (1940). Remedies are those matters which relate to invoking or defending against existing substantive provisions. Substantive provisions are those which impose new duties or grant new rights. The provisions of L. D. 1954 imposing recordkeeping and reporting requirements clearly impose new substantive obligations on persons seeking to appear before the Legislature. As such the emergency clause would constitute retroactive application of new substantive obligations on all such persons. The criminal penalties proposed to be adopted for failure to meet such substantive obligations makes L. D. 1954, as presently drafted, an ex post facto law.

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

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