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Legislative Committee Size and Apportionment  
Maine Const. Art 5 Part First § 8

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AUGUSTA, MAINE 04333

December 17, 1976

Honorable James Tierney  
RD 2  
Lisbon Falls, Maine 04252

Re: Apportionment of Committees

Dear Representative Tierney:

We are pleased to respond to the questions we have received regarding proper apportionment of legislative committees charged with confirmation responsibilities in light of the amendment to Article V, Part First, Section 8, of the Maine Constitution. The particular provision of Section 8 in question reads:

"The procedure for confirmation shall be as follows: An appropriate legislative committee comprised of members of both houses in reasonable proportion to their membership as provided by law shall recommend confirmation or denial by majority vote of committee members present and voting."

The question posed in light of this constitutional provision is: What is the proper number and ratio of House and Senate members on confirming committees?

Our review of the law indicates that this question is primarily one for determination of the Legislature. However, we would advise that it would appear that the provision of Section 8 regarding "reasonable proportion" would be met by committees with membership ratios which vary from 10 House members to 3 Senate members to 14 House members to 3 Senate members.

The question of the proper responsibility and relative influence of the House and Senate was a critical issue in the development of the constitutional resolution abolishing the Executive Council and assigning confirmation powers of the legislature. The initial legislation, 107th Legislature, L.D. 24, was reported from the Committee on State Government with four separate reports.

Report A (Committee Amendment "A", H-538) recommended creation of a single legislative confirmation committee to assume the confirmation responsibilities of the Executive Council. It was proposed that this committee include ten House Members and five Senate Members.

Report B (Committee Amendment "B", H-584) also recommended a legislative confirmation committee but with five members each from the Senate and the House.

Report C (Committee Amendment "C", Amended, H-585) recommended a 33 member legislative confirmation committee which would be composed of the members of the Senate. In effect, the Senate would become the confirming body.

Report D was an "Ought Not to Pass" report.

See Legislative Record House, June 2, 1975, B-1495-B-1496.

Committee Amendment "A" (the 10 to 5 confirmation committee) was initially adopted by the House. Committee Amendment "C", making the Senate the confirming body, was initially adopted by the Senate. A conference committee was appointed and reported back Committee Amendment "B", the confirmation committee with membership split evenly between the House and the Senate, as a recommended compromise. This recommended compromise was adopted by the House, but, it was rejected in the Senate. Thereupon, a second conference committee was created. This committee reported back Conference Committee Amendment "A" (S-381). This recommendation ultimately became the constitutional resolution and included the provisions which were adopted amending Article V, Part First, Section 8.

The Statement of Fact on Conference Committee Amendment "A" only generally describes its intent and is not helpful in determining the instant question. However, some slight guidance is provided in the legislative debates. Thus, during initial House debate on the original proposal adopted by the House (the 10-to-5 proposal) Representative Cooney, the House Chairman of the State Government Committee, addressed the 10-to-5 ratio and noted:

"If we were being absolutely proportional and responsible and we were trying to see that the two bodies were proportionately balanced against one another in terms of making a committee to perform confirmation duties, the balance would be far greater than 10 to 5." Legislative Record, House, June 4, 1975, B-1610.

Although this statement was made prior to development of the compromise which was ultimately adopted, it contains the implication that at least one of the principal authors of the legislation did not accept 10 to 5 (or 2 to 1) as a reasonable proportion if proportionality were to be sought.

The remaining limited legislative history is also derived from House debate. During House discussion of the final compromise, Representative DeVane addressed a question regarding the Senate capacity to override the vote of a standing committee. The bare majority stated was 7-6, thus indicating some legislative contemplation that committees might include 13 members.

Subsequently, Representative DeVane amended the question to inquire whether the Senate could override the unanimous joint committee vote. In response to that question you, as one of the drafters of the compromise which was finally approved, responded in the affirmative and added: "and in doing so, obviously it would have to be overriding the unanimous report of the three Senate members of that committee." Legislative Record, House, June 26, 1975, B-2328. Thus, some legislative history appears indicating that committees would include 13 members and that 3 of those members would be Senators.

There is no legislative history relating to the proportionality issue in the Senate debates on the compromise, Legislative Record, Senate, June 27, 1975, B-2337 - B-2339.

Further, the legislation must be interpreted in light of the established practice relating to standing committees which tend to be made up of 3 members of the Senate and 10 or less members of the House, see Joint Rules of the House and Senate, Section 1, relating to Joint Standing Committees.<sup>1/</sup> Nowhere in the legislative history of the constitutional resolution is there specifically stated any intent to change this practice and the relative memberships of

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<sup>1/</sup> For example, 21 of the 22 Joint Standing Committees of the 107th Legislature had membership of 3 Senators and 10 Representatives. The only exception was the Committee on Appropriations and Financial Affairs which had 3 Senators and 7 Representatives.

House and Senate members, although there is nothing which requires use of the current committee structure. In fact, during debate it was noted that: "Committees bearing a reasonable proportion between the House and the Senate would hold a hearing and make a decision as to whether or not the individual appointed by the Governor would be confirmed."<sup>2/</sup> This neither supports nor denies reliance on the existing joint standing committee structure. Subsequent to voter approval of the Constitutional Amendment, the Legislature adopted P.L. 1975, c. 771 which explicitly placed confirmation responsibility with joint standing committees, but without addressing the proportional membership question. However, as the Legislature has selected the joint standing committees to perform confirming functions, committee membership, at least when performing confirmation functions, must be within the parameters of the constitutional proportionality requirement.

A 10-3 breakdown, although not directly proportional to the members of the House and the Senate, must be considered within the realm of reasonableness as it represents the existing practice regarding committees at the time of the adoption of the legislation (see footnote 1) and it appears that the 10-3 relationship was at least recognized and not commented upon critically during legislative debate. Any closer ratio (e.g., 10-5) would arguably be unreasonable in light of the legislative history on the particular point.

If proportionality were absolutely maintained, a committee would have to be composed of 14 House members and 3 Senate members or some larger or smaller number of members which approximated this ratio. However, the term "reasonable" implies flexibility within certain parameters not an absolute number; it is a relevant not an absolute term. In Re September 1971 Grand Jury, 454 F.2d 580 (7th Cir., 1971); Town of Vernon v. Public Utilities Comm., 318 A.2d 121 (Conn., 1974); People v. Prisco, 326 N.Y.S.2d 758. Here one of the parameters of reasonableness is set at 10 House members and 3 Senate members by the past practice relating to standing committees, the lack of indication of any intent to change that practice, the limited discussion of the issue in the House debate. The other side of the parameter may be set by the 14 to 3 breakdown which would apply if proportionality were strictly applied. Within this range it would appear that

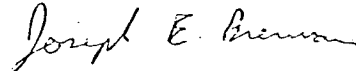
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<sup>2/</sup> Legislative Record, House, June 26, 1975, B-2327, Statement of Representative Tierney

the Legislature may in its discretion establish the membership of the joint standing committees with confirmation responsibilities and comply with the "reasonable proportion" standard of Article V, Part First, Section 8.

As this matter is a question of policy and of fact to be determined by the House and the Senate, the actual number, within these parameters cannot be set simply by legal analysis. However, it may be appropriate to examine and revise the rules relating to joint standing committees for the 108th Legislature in light of these parameters to assure that confirming committees ratios are not less than 10 to 3, nor more than 14 to 3.

Sincerely,



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Attorney General

JEB:jg

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