

MAINE STATE LEGISLATURE

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EXHIBIT
NO. 1017 A-7 V Pt First & 8

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January 19, 1977

David Silsby, Director
Office of Legislative Research
State House
Augusta, Maine

Dear Mr. Silsby:

This responds to your recent request for an opinion regarding confirmation processes. Specifically, you asked what would be the effect of a negative recommendation by an appropriate Joint Standing Committee on a particular nomination followed by an affirmative vote of the Senate.

Briefly, the answer is that a Joint Standing Committee recommendation could be overridden by a Senate vote of 2/3 of those members present and voting.

DISCUSSION:

Article V, Part First, Section 8, of the Maine Constitution provides in pertinent part:

"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 committee recommendation shall be reviewed by the Senate and upon review shall become final action of confirmation or denial unless the Senate by vote of two thirds of those members present and voting overrides the committee recommendation. The Senate vote shall be by the yeas and nays."

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It will be noted that Section 8 contemplates both recommendation of confirmation and recommendation of denial of confirmation by the appropriate committee. Section 8 then grants the Senate the power to override the "committee recommendation" by the 2/3 vote. Nowhere in Section 8 or elsewhere in the legislative history is there any indication that an affirmative recommendation favoring confirmation should be treated any differently than a negative recommendation opposing confirmation, see particularly, Legislative Record, House, June 26, 1975, B2327-2328. Further, nothing in the statute enacted to implement the constitutional amendment, P. L. 1975, c. 771, conveys any different intention. The phrase continually used in that statute: "subject to review by the joint standing committee on _____ and to confirmation by the Legislature," suggests no different treatment of negative or positive recommendations. Accordingly, a recommendation by a committee that confirmation be denied can be overturned by a Senate vote of 2/3 of the members present and voting in the same manner as a recommendation that confirmation is approved.

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

JEB:we

cc: Hon. John L. Martin
Hon. Joseph Sewall
Hon. James Tierney
Hon. Linwood E. Palmer, Jr.
Hon. Jerrold B. Speers
Hon. Gerard P. Conley