

MAINE STATE LEGISLATURE

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*Legislature's Authority over Elections
Elections; Constitutionality of Authority to order new elections*

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February 2, 1977

Honorable Nancy Masterton
House of Representatives
State House
Augusta, Maine

Dear Nancy:

This responds to your request for an opinion regarding the possible constitutional implications of legislation which you are considering to require an immediate new election in cases where the Commission on Governmental Ethics and Election Practices finds that there is a tie vote or determines that it is unable to reach a determination regarding the result of the election.

Such legislation would not be constitutional under current provisions of the Maine Constitution.

Article II, Section 4, of the Maine Constitution specifies that:

"Election of Senators and Representatives
will be on the Tuesday following the first
Monday of November biennially forever."

This specifies the date for legislative elections. The only exceptions to this date are where elections are called to fill a vacancy in accordance with the provisions of Article IV, Part First, Section 6 and Part Second, Section 5 of the Maine Constitution. The Constitution then provides that each House has exclusive jurisdiction to judge the elections and qualifications of its own members. Article IV, Part Third, Section 3. As to each House the Commission on Governmental Ethics and Election Practices acts solely in an advisory capacity. Thus, it will be noted that 21 M.R.S.A. § 1423-3-A requires the Commission to submit its decision and order to the appropriate body under the Constitution for final decision. Further, the Legislature, which is the decision making

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body regarding an election, does not convene until approximately two months after the election by the provisions of Article IV, Part Third, Section 1. This is the body which must make the final decision. Until the Legislature meets and decides the results of elections, decisions by any other body can have no binding effect. An act of a previous legislature, even if embodied in statute, could not pre-empt the ultimate authority of the new legislature to judge the qualifications of its members.

Accordingly, we must advise that a statute which requires the calling of a new election upon a finding of the Commission on Governmental Ethics and Election Practices that a legislative election has resulted in a tie, or that it cannot reach a decision would not be consistent with the above-cited provisions of the Maine Constitution.

Sincerely,


DONALD G. ALEXANDER
Deputy Attorney General

DGA:jg