

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Reference: Referendum

STATE OF MAINE

Inter-Departmental Memorandum Date March 3, 1977

David S. Silsby, Director

Dept. Legislative Research

S. Kirk Studstrup, Assistant

Dept. Attorney General

Referendum Clauses

On December 15, 1976, we rendered an opinion for Representative Gail Tarr in which we informed the Representative that non-emergency legislation which contains a provision that the act be put to referendum may be presented to the people prior to the effective date of the act, i.e., 90 days after recess of the Legislature. We noted in that opinion that most recent referendum clauses have indicated that the act would become effective 90 days after adjournment for the purpose of presenting the legislation to the people and that this wording would have to be changed if the Legislature wished to order an earlier referendum. In response to this opinion, you have asked us if a form of referendum clause which does not include the direction of limited effectiveness 90 days after recess would be appropriate for general use. The answer to that question is affirmative.

We noted in our December 15, 1976, opinion that the Supreme Judicial Court has addressed the question of the timing of referendum elections. Opinion of the Justices, 144 Me. 412 (1949). In that opinion the Justices stated:

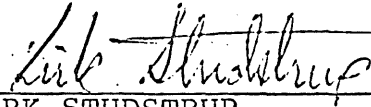
"The Constitution carries no provision governing the time at which such an election shall be held. That time is left to the judgment and discretion of the Legislature."

This is the only opinion on this subject which has been stated in Maine, and we have found no other opinions on this subject in other jurisdictions. Non-emergency legislation which has been finally enacted, either by approval of the Governor or by override of a gubernatorial veto, has "life" even though its substantive provisions are not effective under the Constitution until 90 days after adjournment of the Legislature. It has "life" for amendment purposes, and we see no reason why it does not have "life" for referendum purposes as soon as it is enacted. It should be noted that this opinion does not create a conflict with either the letter or spirit of Article IV, Part Third, Section 16 of the Constitution of Maine which provides that no legislation of a non-emergency nature ". . . shall take effect until 90 days after the recess of the Legislature passing it. . . ." In our opinion to you of June 21, 1976, concerning the effective date of non-emergency legislation, we stated that Article IV, Part Third, Section 16 must be read together with Section 17 since they both were the result of a constitutional amendment to provide initiative and referendum procedures for the people. The 90-day delay in effectiveness of non-emergency legislation stated in Section 16 corresponds with the 90-day period within which referendum petitions may be presented under Section 17. Therefore, since the 90-day delay was to allow the people to

David Silsby
Page 2
March 3, 1977

exercise their referendum rights, and since a legislatively directed referendum during this period would accomplish the same purpose without the necessity of petitions, there would be no constitutional conflict.

It is our opinion that referendum clauses directing elections on specified dates or on specific occasions which may occur between the time that an act is enacted and the time when its substantive provisions become effective would be appropriate for general use for the reasons stated above. We suggest that previous language which inferred that the legislation must be effective in order to present it for referendum be avoided in order to prevent uncertainty in this regard.



S. KIRK STUDSTRUP
Assistant Attorney General

SKS/ec