

# MAINE STATE LEGISLATURE

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Succession in Office  
Emergency Legislation  
Me. Const Art 9 § 17

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AUGUSTA, MAINE 04333

April 7, 1977

William Brown  
Staff Assistant  
Committee on State Government  
Room 427  
State House  
Augusta, Maine

Re: Constitutional Provisions and Statutes Providing  
Methods of Succession for Legislators in Emergency  
Situations.

Dear Bill:

This responds to your request for an opinion regarding certain aspects of L.D. 24 and L.D. 568 which would have the effect of repealing provisions of law authorizing the Legislature to appoint successors in office. Before addressing the initial questions, we would note that we interpret Article IX, Section 17, of the Maine Constitution, to authorize and direct the Legislature to make general provision for operation and maintenance of state and local government operations in emergency periods. We do not interpret Section 17 as absolutely requiring that the Legislature adopt specific provisions relating to succession of any particular office, be it the office of an individual Legislator, an appointed state official, or a municipal official.

In accordance with this section of the Constitution, the Legislature has enacted numerous provisions of law relating to succession of officials and maintenance of government operations in case of emergency. The most explicit and wide-reaching authority in this area is provided in Title 37-A, Chapter 3, and most particularly § 57 thereof. Other sections of law currently on the books include Chapter 3 of Title 3, which is addressed by L.D. 568, and Title 5, §§ 81, 121 and 241 which provide for succession in the case of vacancy in the offices of the Secretary of State, State Treasurer and State Auditor, respectively. (Vacancies in the office of Attorney General are filled according to the provisions of Article IX, Section 11 of the Constitution.)

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With this background, your questions are addressed as follows:

QUESTION #1:

Would it be Constitutional to simply enact L.D. 568?

It would be constitutional to enact L.D. 568. With Title 3, Chapter 3, repealed, there would still remain on the books, particularly in Title 37-A, legislation providing for maintenance and operation of the state government in the event of an emergency. Title 37-A represents compliance with the provisions of Article IX, Section 17. As indicated above, we do not interpret Article IX, Section 17, to require a specific statutory succession procedure for every state and local public office. Rather, we view Section 17 as directing the Legislature to adopt such measures as it deems necessary (and repeal them when no longer necessary) to assure continuity of state and local governmental operations in periods of emergency.

QUESTION #2:

Would it be Constitutional to simply enact L.D. 568 on an emergency basis?

Generally in enacting emergency legislation, the courts give the Legislature broad discretion, the only limitations being that the Legislature state in the preamble to the emergency legislation sufficient facts to demonstrate upon subsequent review that an emergency exists and that it is of a public rather than a private nature and thus justifies prompt enactment of legislation. Waterville Realty Corp. v. City of Eastport, 136 Me. 309 (1930); Payne v. Graham, 118 Me. 251 (1919). See also Morris v. Goss, 147 Me. 89 (1951). It would be up to the initial judgment of the Legislature to determine whether sufficient facts exist to justify repealing Chapter 3 of Title 3 in advance of the time when legislation adopted by the first session of the 108th Legislature will normally take effect.

The remainder of the questions you pose need not be answered as question 1 is answered in the affirmative, and question 2 is answered in the affirmative, although that answer is qualified. We would note that concerns about constitutionality would be further reduced by a finding of impracticality as suggested in question 3.

I hope this information is helpful.

Sincerely,

DONALD G. ALEXANDER  
Deputy Attorney General

DGA/ec

cc: Hon. John W. Jensen  
Hon. David H. Brenerman