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Legislative Delegation of Power
Me Const art 4 pt 3 sec. 2

LD 1671

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June 13, 1977

Allen Pease, Director
State Planning Office
State House
Augusta, Maine 04333

Dear Mr. Pease:

You have asked for an informal opinion on the constitutionality of Section 2 of L. D. 1671, AN ACT Providing for Improved State Planning and Budget Development. Specifically, your questions are:

1) Is it constitutionally permissable for the Legislature to establish an aggregate level of spending in the manner set forth in L. D. 1671?

2) If such a procedure is unconstitutional, is the following alternate procedure suitable: redraft Subsection 3 to require the Legislature to enact a bill setting an aggregate level of spending by a certain date early in the session for approval or veto by the Governor. Any changes deemed necessary later in the session would then have to be made by legislative action, again for consideration by the Governor under the standard process for enacting legislation?

After reviewing Article IV, Part Three, Section 2 of the Maine State Constitution and the pertinent case law, it is clear that the procedure outline in L. D. 1671 is unconstitutional. There are no apparent constitutional difficulties, on the other hand, with the alternate procedure.

Section 2 of L. D. 1671 provides in relevant part:

> "3. Legislative concurrence or revision. The Legislature shall review the Governor's recommendations and, no later than 4 weeks from receipt of the Governor's recommendations, the Legislature shall concur with the recommendations or establish an alternate aggregate

> level of state spending. Failure of the Legislature to complete final action on the Governor's recommendations within the time provided shall mean that such recommendations are automatically accepted as law governing the aggregate leval of state spending. The aggregate level of state spending established by law either by formal action of the Legislature or by its failure to act may be altered only by the favorable vote of 2/3 of the members of the Legislature at any time.

This procedure is constitutionally defective in two respects. First, Article IV, Part Three, Section 2 of the Maine State Constitution provides in part that "Every bill or resolution, having the force of law to which the concurrence of both Houses may be necessary, except on a question of adjournment, which shall have passed both Houses shall be presented to the Governor, and if he approve, he shall sign it, if not, he shall return it with objections to the House in which it shall have originated . . ." (emphasis added). According to the plain language of this constitutional provision, the Legislature may not enact anything having the force of law without the approval of the Governor. Since the quoted language of L. D. 1671 contemplates that an aggregate level of spending, having the force of law, could be established without the approval of the Governor, the provision is inconsistent with the constitutional requirement. The Supreme Judicial Court has construed the constitutional language in question in a manner consistent with this interpretation, Opinion of the Justices, 231 A. 2d 617 (Me. 1967); Moulton v. Scully, 111 Me. 428, 448 (1914); Stuart v. Chapman, 104 Me. 17, 23 (1908). Therefore, in view of both the plain language and judicial interpretation of Article IV, Part 3, Section 2, the procedure outlined in Section 2 of L. D. 1671 is unconstitutional.

In addition, the provision of L. D. 1671 in question is defective for a second reason. Its last sentence provides that once established, the aggregate level of spending may be altered only by a two-thirds vote of the members of the Legislature. The same provision of the Constitution quoted above also requires that in order for a bill to become law, each House shall give its "concurrence," that is, approve it by majority vote. Any legislation which purports to raise the number of votes acquired for subsequent legislation would be inconsistent with this provision, such

changes being capable of enactment only by constitutional amendment. Since the last sentence of L. D. 1671 seeks to make such a change, it is unconstitutional for that reason.

The procedure outlined in part 2 of your question, which employs the procedures of the normal legislative process, does not run afoul of either of these difficulties.

I hope this answers your questions.

Sincerely,

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

JEB/bls

cc: Donald F. Collins, Senate Chairman
Peter J. Curran, House Chairman
James F. Wilfong, Representative