

MAINE STATE LEGISLATURE

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Mr. Const. Art 4 Pt 3rd Sec 2
Bond Issues; Veto
Referendums; Veto

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AUGUSTA, MAINE 04333

July 15, 1977

Honorable May M. Ross
Secretary of the Senate
Senate Chambers
State House
Augusta, Maine 04333

Dear Mrs. Ross:

We are responding to your letter of July 12, 1977, in which you asked two questions concerning the constitutional procedure to be used with legislation which is subject to referendum. Your questions are whether bills which have been passed by both Houses of the Legislature should be presented to the Governor for his approval or should be presented directly to the Secretary of State to be placed on a referendum ballot, when those measures are: (1) bond issue legislation passed under the provisions of Article IX, Section 14 of the Constitution of Maine; and (2) any other measure which contains a referendum clause. The answer is that the legislative measures in both cases should be presented to the Governor for his approval pursuant to Article IV, Part Third, Section 2 of the Constitution of Maine.

Your questions require consideration of Constitutional provisions which read, in pertinent part:

"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 . . ." Article IV, Part 3, Section 2.

"The Legislature shall not create any debt or debts . . . which shall singly, or in aggregate . . . exceed two million dollars, except . . . that whenever two-thirds of both Houses shall deem it necessary, by proper enactment ratified

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by a majority of the electors voting thereon at a general or special election, the Legislature may authorize the issuance of bonds on behalf of the State . . ." Article IX, Section 14.
(Emphasis provided)

Article IX, Part Third, Section 19 of the Constitution would not relate to your questions except insofar as it allows the Legislature to include referenda provisions on legislation. The reference in that section to the Governor's veto power is not a limitation upon such power as is exercised before such legislation is sent to referendum.

The Justices of the Supreme Judicial Court have rendered an opinion which in large part answers your questions. In 1967 the Legislature passed an appropriations bill for additional expenditures of State government on condition that the legislation be ratified by the people at a referendum. The House of Representatives asked the Justices for their opinion on questions of whether such legislation had the force of law--so that it was necessary to present the act to the Governor for his consideration--and whether the Governor had the power to veto such legislation. The Justices answered these questions by giving their opinion that the presence of a referendum clause in a bill would not alter or modify the requirement of Article IV, Part Third, Section 2 of the Constitution with regard to presentation of such legislation to the Governor, and that the Governor has the power to veto bills which carry a referendum clause added at the discretion of the Legislature. The Justices concluded that if such bill was vetoed and the veto was subsequently overridden by the Legislature, the legislation would then be submitted to referendum. Opinion of the Justices, 231 A.2d 617 (Me., 1967).

The only remaining question is whether bond issue legislation, passed pursuant to the mandatory referendum provisions of Article IX, Section 14, would create an exception to the Opinion of the Justices examined above. It is our opinion that this additional factor would not cause an exception and that the rationale of the Justices would be equally applicable. Article IX, Section 14 provides that such legislation is permitted only by "proper enactment" of two-thirds of both Houses followed by ratification at referendum. The term "proper enactment" is not defined in the section. Nor is this terminology clarified by legislative or constitutional history.^{1/} Therefore, we

^{1/} The pertinent provision of Article IX, Section 14 was added by Constitutional Amendment LXVII, pursuant to Resolves, 1949, C. 99 (H.P. 1571, L.D. 1885).

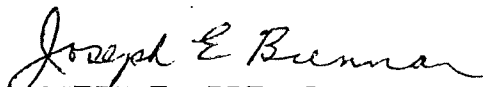
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must conclude that the term "proper enactment" refers to the standard legislative process which is used for all Acts and Resolves. This legislative process must include review by the Governor pursuant to Article IV, Part Third, Section 2, since approval by the Governor, or other post-review constitutional means of enactment, are the last legislative acts which "breathe life" into an enactment. Stuart v. Chapman, 104 Me. 17 (1908). Consequently, bond issue legislation which is constitutionally required to contain a referendum clause, nevertheless must be presented to the Governor for his review and subsequent action.^{2/}

The only apparent exception to the expressed opinion that legislation containing a referendum clause must be presented to the Governor for his review, is in the limited area of constitutional amendments. A Resolve proposing a Constitutional Amendment pursuant to the provisions of Article X, Section 4 would go directly to referendum without presentation to the Governor. Opinion of the Justices, 261 A.2d 53 (1970). It is noted by way of comparison, however, that the Constitutional provision regarding Constitutional amendments speaks in terms of a resolve being "passed" rather than being by "proper enactment."

We trust that the foregoing opinion will be helpful to you.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB:mfe

cc: Governor James B. Longley
Joseph Sewall, President of the Senate
John Martin, Speaker of the House
Honorable Jerrold Speer
Honorable David G. Huber
Honorable Gerard P. Conley
Honorable Peter W. Danton
Honorable James E. Tierney
Honorable Rodney S. Quinn
Honorable Linwood E. Palmer, Jr.
Honorable William J. Garsoe

2/ It is interesting to note in this regard that the Justices of the Supreme Judicial Court have also rendered their opinion that bond issue legislation may not be started through the initiative process set forth in Article IX, Part Third, Section 18. Opinion of the Justices, 159 Me. 209 (1963).



The Senate of Maine
Augusta

July 12, 1977

The Honorable Joseph E. Brennan
Attorney General
State House
Augusta, Maine 04333

Dear Mr. Brennan:

Article IV, Part Third, Section 19 of the
Constitution of Maine reads as follows:

"...The veto power of the Governor
shall not extend to any measure
approved by vote of the people,
... . The Legislature may enact
measures expressly conditioned upon
the people's ratification by a
referendum vote."

Would you please give us your opinion as
to whether or not (1) bond issues enacted by the
Legislature should be presented to the Governor for
his approval or should be presented directly to the
Secretary of State to be placed on the ballot; and
(2) should any measure which is enacted by the
Legislature and which is to be placed on the ballot
for a referendum vote be presented to the Governor
for his approval or should it be presented directly
to the Secretary of State?

Thank you for your attention to these matters.

Sincerely,

May
May M. Ross
Secretary of the Senate