

MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04333

July 22, 1977

Honorable Markham L. Gartley
Secretary of State
State House
Augusta, Maine 04333

Dear Mr. Gartley:

We are responding to your memorandum of July 15, 1977, in which you requested our opinion on several questions relating to referendum dates. Your request concerns five constitutional resolutions and three acts to authorize bond issues which have been passed by the 108th Legislature in its first annual session. We are not certain at the time of writing whether the acts concerning the bond issues (L.D. 136, 615, and 1856) have been approved by the Governor so that they will go to referendum. However, for purposes of this opinion, we will assume that these acts are in a posture where they would be submitted to referendum in accordance with the provisions contained in each.

Your questions with regard to these two classes of referendum issues - constitutional amendments and bond issues - may be summarized as follows:

1. Has there been a date certain established for submission of each to the electors?
2. Are there alternative dates for submission of these matters to referendum?
3. Can the Legislature change the date of submission to referendum?
4. If the Legislature can make such change, what would be the appropriate procedure?

Honorable Markham L. Gartley
July 22, 1977
Page 2

We will answer these questions in narrative form below, discussing the constitutional resolutions first and the bond issues second.

Amendments to the Constitution are governed by Article X, Section 4 of the Constitution of Maine, which reads, in pertinent part:

"The Legislature, whenever two-thirds of both Houses shall deem it necessary, may propose amendments to this Constitution; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, in the manner prescribed by law, at the next biennial meetings in the month of November, or to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives, on the Tuesday following the first Monday of November following the passage of said resolve. . . ."

This constitutional provision has been construed by the Justices of the Supreme Judicial Court as offering alternative dates upon which constitutional resolutions may be presented to the voters, and as specifying a precise day and calendar month for such referendum. Opinion of the Justices, 157 Me. 225, 229 (1961). In that same opinion the Justices stated that this provision must be strictly construed, and a referendum on a constitutional amendment which is held on a date other than those authorized in Article X, Section 4 would not constitute a valid vote on the amendment. The "precise day and calendar month" to which the Justices referred in their opinion is the Tuesday following the first Monday of November, regardless of the year involved. This date is specified in Article X, Section 4 for the alternative of a special election held in an odd number year following the passage of the constitutional resolve, and the same date is required with respect to general elections in even numbered years by Article II, Section 4 of the Constitution. This

Honorable Markham L. Gartley
July 22, 1977
Page 3

analysis is supported by the wording of the question which was presented to the voters when the pertinent part of Article X, Section 4 was amended into its present form, in 1913. Resolves, 1913, Chapter 354; enacted as Constitutional Amendment XXXVII. Therefore, a constitutional resolution must be presented to the voters on the Tuesday after the first Monday in November either at the same time as a general election of Senators and Representatives immediately following passage of the resolution in an even numbered year, or at a special election, if any, following passage of the resolution in an odd numbered year.

Since there is no general election in November, 1977, the alternative of a special election in November is available. The Legislature has left this alternative open by providing in the referendum procedure sections of Constitutional Resolutions of 1977, Chapters 1 through 5, that the resolutions shall be presented to the voters ". . . at the next general election in the month of November or special state-wide election on the Tuesday following the first Monday of November following the passage of this resolution. . . ." We interpret this provision to mean that the resolutions shall be put to referendum on November 8, 1977, if there is a special state-wide election held on that day; otherwise, they shall be voted upon at the general election which will be held on November 7, 1978.

The only manner in which the Legislature could provide a more definite date for the referendum would be to amend the constitutional resolutions, specifically providing for a special election for this purpose this November or specifically requiring that the vote shall be taken at the general election of November 1978. Such amendment could be effected through the same legislative process used for passage of the resolutions themselves.

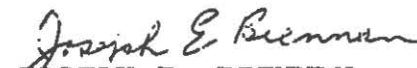
The answer to your questions with regard to the bond issue legislation, particularly L.D.'s 136, 615, and 1856, is that the Legislature has provided specifically in each case that the referendum take place at "a special state-wide election to be held on the Tuesday following the first Monday of November following passage of this Act." Assuming that one or all of these legislative matters are approved by the Governor or are otherwise enacted pending re-

Honorable Markham L. Gartley
July 22, 1977
Page 4

ferendum approval, it is clear that a special state-wide election must be called for November 8, 1977, to consider these matters. Since the referendum provisions of these specific acts do not provide for any alternative dates, it is our opinion that no alternative date for submission to referendum is possible. However, Article IX, Section 14 of the Constitution, concerning bond issue referenda, does not require the Legislature to submit the questions to referendum at any particular date, and it would be possible for the Legislature to amend the referendum provisions at an extended annual session or special session prior to this November, using the same legislative process that was used for their enactment.

In summary, at the present time and assuming that one or all of the bond issues noted above are approved by the Governor or otherwise enacted, the following situation exists. A special election will have to be held on November 8, 1977, pursuant to the referendum provisions of any one of the bond issue legislation noted. Since there will be a special election on November 8th, the five constitutional resolutions would also be presented to the voters on that same date pursuant to their referendum provisions. In addition, there is other bond issue legislation which provides for presentation at referendum ". . . at the next general or special state-wide election. . .," and these issues would follow the other bond issues and constitutional resolutions on to the November 8th ballot. Of course, this analysis would be subject to the provision that the Legislature may amend any one of these pieces of legislation and specifically provide to the contrary.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB:SKS:we

cc: Honorable James B. Longley
Honorable Joseph Sewall
Honorable John L. Martin