Appropriations by Referendum of Initiative Legislation' Appropriations

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Honorable Laurier G. Biron
Box D
Lewiston, Maine 04240

Re: Appropriations Provision in Initiative Measure to Establish a State Gambling Commission

Dear Representative Biron:

In my letter to you of June 23, 1977, I indicated that we were researching the question of whether the appropriations' provision contained in the proposed Act to Establish a State Gambling Commission and to Permit Gambling Within Certain Areas of the State were within the scope of the constitutional provisions for initiative and referendum, Me. Const. Art. IV, Pt. 3, §§ 17-20. Section 4 of the Act to be initiated, which appropriates specific sums for particular items for the fiscal years 1977-78 and 1978-79, raised two constitutional questions:

1) Is a measure which, ancillary to its establishment of a new state agency, provides for the appropriation of general revenues for the support of that new agency, properly within the power of initiative reserved to the people by Me. Const. Art. IV, Pt. 3, § 18?

2) Assuming the answer to Question 1 is yes, do the specific provisions of the proposed Act run afoul of the restrictions on State indebtedness established by Me. Const. Art. IX, § 14?[1/]

Based upon a careful review of the controlling constitutional provisions and the relevant case law, our opinion is that the appropriations' provision of the proposed act is properly the subject of the initiative power, and that, with the modifications discussed below, the appropriations' provision conforms to the constitutional limitations on State indebtedness.

1/ For purposes of this opinion, we assume that the dates in the proposed measure will be updated; specifically, that Section 4 of the revised measure will purport to appropriate funds for the fiscal years 1978-79 and 1979-80.

Article IV, Pt. 3, § 18 of the Constitution of the State of Maine declares that:

> "The electors may propose to the Legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the State Constitution . . ."(Emphasis added).

Measures so initiated, if not adopted by the Legislature, "shall be submitted to the electors," (emphasis added), at a general election, or "referred to the people at a special election . . ." id., (emphasis added). The terms "submitted" and "referred" are used synonymously, such that they fall within the purview of Article IV, Pt. 3, § 19 of the Constitution of the State of Maine, which declares that:

> "Any measure referred to the people and approved by a majority of the votes given therein shall . . . take effect and become law in thirty days after the Governor has made public proclamation of the result of the vote on said measure, . . .; provided, however, that any such measure which entails expenditure in an amount in excess of available and unappropriated state funds shall remain inoperative until forty-five days after the next convening of the Legislature in regular session, unless the measure provides for the raising of new revenues adequate for its operation." (Emphasis added)

Our construction of these provisions is guided by two principles: that the initiative power is to be liberally construed to effectuate its purposes, Opinion of the Justices, 275 A.2d 800, 803 (Me. 1971), and that the proper scope of initiative measures is limited only by other constitutional provisions. 42 Am. Jur. 2d., Initiative and Referendum, § 9. We are also influenced (1) by the fact that, unlike other states' constitutional provisions, the Constitution of the State of Maine does not expressly exclude the subject of appropriations from the initiative process, 82 C.J.S., Statutes, § 250, and (2) by the willingness of the Supreme Judicial Court to countenance a referendum on an appropriations' bill, Opinion of the Justices, 146 Me. 183 (1951) and an initiative on a revenue measure, Opinion of the Justices, 370 A.2d 654, 667-68 (Me. 1977).

Because Me. Const. Art. IV, Pt. 3, § 18 does not expressly exempt appropriation matters from the proper scope of the initiative power, the above-noted rules of construction require us to presume that an appropriations provision incidentally attached to a measure to

establish a new state agency is properly addressed by initiative, unless it can be determined that such an application of the initiative power is thoroughly inconsistent with its purposes. Cf. 42 Am. Jur. 2d. § 9, supra.

The traditional objection to allowing appropriations' measures to be subject to the initiative process, as stated by the court in State v. Dixon,[2] 195 P. 841, 845 (Mont. 1921), is that "an initiative measure might be proposed and passed by the people without sufficient knowledge of the necessity therefor or the amount of funds available . . ."[3] However, Me. Const. Art. IV, Pt. 3, § 19 operates to prevent the anomalous situation of having an initiated and approved measure require the appropriation and expenditure of non-existent general revenues. It stipulates that such a measure shall not take effect until after the beginning of the next legislative session. The purpose of this postponement is to allow the new legislature to make provision for the additional revenues required by the initiated measure.

More significant is the fact that Me. Const. Art. IV, Pt. 3, § 19, contemplates that initiated measures requiring the expenditure of funds shall go into effect thirty days after the Governor's proclamation, if the amount required to be expended is less than the sum of available and otherwise unappropriated funds in the state treasury. Since "no money shall be drawn from the treasury, except in consequence of appropriations or allocations authorized by law," Me. Const. Art. V, Pt. 4, § 4, the taking effect of an initiated measure after the proclamation of the Governor presumes that the sums required by the initiative measure have been actually or constructively appropriated. Thus, the operation of Me. Const. Art. IV, Pt. 3, § 19 is premised on the assumption that an initiated measure may properly effect an appropriation of funds from the general treasury.

2/ Article V, Section 1 of the Montana Constitution excepts "all laws relating to appropriations of money" from the initiative and referendum power.

3/ That the appropriation of non-existent revenues is the chief objection to allowing appropriation measures to be enacted by initiative is illustrated by those instances where a court upheld initiated measures which provided for the appropriation of funds accumulated from a special tax or fees levied by the same initiated meausre. See, eg., Board of Osteopathic Examiners v. Riley, 218 P. 1018 (Cal. 1923)

The continued viability of this objection is questionable in view of Yelle v. Kramer, 520 P.2d. 927 (Wash. 1974), which held that although an appropriations bill which set the salaries of state officers was exempt from referendum, a bill to set the salaries of the same state officers could be properly initiated.

The initiative power of the people of the State of Maine is not without limitation, however. The Supreme Judicial Court has held that Article IX, Section 14 of the Maine Constitution removes the prerogative to create an indebtedness for the State from the initiative power. Opinion of the Justices, 159 Me. 209, 191 A.2d 357 (Me. 1963).

The question moves to whether the appropriations contemplated by the proposed initiative measure are "debts" or "liabilities" within the meaning of Article IX, Section 14. On this issue, the Opinion of the Justices, 146 Me. 183, 189-190 (1951) is instructive. The Supreme Judicial Court there held that the Ninety-Fifth Legislature, sitting in February of 1951, could not constitutionally pass a resolve appropriating revenues from the general fund for the 1952-53 fiscal year. Since the people, in exercising the initiative power, are subject to the same constitutional restrictions as the Legislature, Opinion of the Justices, 159 Me. 209, 191 A.2d 357, supra, it follows that an initiative petition may not constitutionally require the appropriation of funds beyond the biennium in which it is approved by the electorate.

Our conclusion is, then, that an initiative measure submitted to the voters after the close of the next legislative session (July 1978) may not require the appropriation of funds beyond the fiscal 1978-79 year.

If we can be of further assistance in this matter, please do not hesitate to call on us.

Sincerely yours,

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Deputy Attorney General

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