

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

September 9, 1977

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

Dear Mrs. Ross:

We are responding to your letter of September 2, 1977, in which you requested our advice on a question relating to business of the Senate. It is our understanding that the President of the Senate has issued his call for the Senate to come into the session on September 16, 1977, for the purpose of voting upon confirmation of various appointments made by the Governor. This call is made pursuant to authority granted in Article V, Part One, Section 8, of the Constitution of Maine, which reads in pertinent part:

"Either the Governor or the President of the Senate shall have the power to call the Senate into session for the purpose of voting upon confirmation of appointments."

Your question is whether the Senate may conduct any business during this session, other than confirmation of the appointments.

The answer to your question depends upon the business which is proposed. Since receiving your letter we have been orally informed that the "other" business might take the form of Senate Orders, including the submission of questions of law to the Justices of the Supreme Judicial Court pursuant to Article VI, Section 3, of

the Constitution, and the recording in the Journal of various appointments made by the President of the Senate. It is our opinion that these particular functions may be performed at the September 16 session for the reasons stated below.

Article V, Part 1, Section 8, of the Constitution of Maine was enacted in its present form as a result of the referendum approval of Constitutional Resolutions of 1975, Chapter 4 (L.D. 24 as amended by Conference Committee Amendment "A", S-381). Neither a review of the legislative history of L.D. 24 nor Maine case law give guidance in answering your question. Nor is guidance found in 3 M.R.S.A. § 161 or Joint Rules of the Legislature No. 37, both of which consider the confirmation procedures in more detail than the constitutional provision. Therefore, it is necessary to turn to other sources to assist in this endeavor.

Since the session which has been called for September 16 is not a "regular session" of the Legislature, as that term is used in Article IV, Part Third, Section 1, of the Constitution, it must be considered as a form of "special session" for the Senate alone. At least one commentator has indicated that a legislative body may proceed with any business they think is proper, notwithstanding the fact that they have been called into session for a special purpose, unless there is an express prohibition in the relevant constitution to the contrary. Cushing, Law and Practice of Legislative Assemblies, page 209. The general rule has also been stated that a legislative body has the same scope of jurisdiction in a special session as it has in a regular session, and that any constitutional limitation on this general rule must be strictly construed. Long v. State, 127 S.W. 208 (Tex., 1910). It has also been noted that houses of a legislature may conduct many functions independent of each other including confirmation of appointments and passage of resolutions of the body. Hagaman v. Andrews, 232 S. 2d 1 (Fla., 1970). The possibility of such independent action by houses of the Legislature in Maine is confirmed by Article IV, Part Third, Section 12, which contemplates one house being in session while the other is adjourned, and by Article V, Part 1, Section 8, which is under examination here. Furthermore, at least one jurisdiction has held that confirmation of appointments by the Senate and independent resolutions are not "legislative business" within a constitutional restraint on the business of a special session because they are not essentially legislative in nature and require no coordinate action by the other house. In Re Advisory Opinion to the Governor, 59 S. 782, 784 (Fla., 1912); Hagaman v. Andrews, supra.

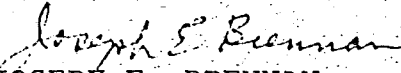
While Article V, Part One, Section 8, of the Constitution does specify that the power to call the Senate into session is for the purpose of confirmation of appointments, that section does not

contain an express prohibition of other legislative business, such as the expressed limitation found in Article IV, Part Third, Section 1, of the Constitution with regard to the business of the second regular session of the Legislature. Therefore, applying a strict construction to this section, and in the absence of express legislative intent to the contrary, it is our opinion that this section does not prohibit the Senate from conducting the limited activities being considered here. Furthermore, even if the "purpose" language of the section was interpreted as a limitation of other legislative business, these particular activities would not come within that classification since they are not legislative in nature.

This opinion does not attempt to address any activities of the Senate other than those which have been stated above.

Please continue to call on us whenever you believe we may be of assistance.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB/ec

cc: Honorable Joseph Sewall
Honorable John L. Martin
Members of the Legislative Council