

MAINE STATE LEGISLATURE

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Legislative Questions To The Court
Governor " " "
Me. Const. Article Sec. 3

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September 30, 1977

Honorable Louis Jalbert
House of Representatives
State House
Augusta, Maine

Dear Representative Jalbert:

This responds to your request for advice as to whether the Governor or either House of the Legislature could pose a question to the Maine Supreme Judicial Court pursuant to Me. Constitution Article VI, Section 3, regarding the legality of expenditure of municipal tax funds in referendum campaigns as addressed in the opinion of this office of September 12, 1977 (copy enclosed).

In making your request you observed that you believe it unlikely that the Court would answer such a request because, in your view, the question, as to the Governor or to either House of the Legislature, would not represent a solemn occasion. You have asked if this office believes that your observation in this area is correct.

For the reasons stated below, and with the reservation that the Supreme Judicial Court, based on the particular question before it, would ultimately decide whether a matter is a solemn occasion, we believe that it would be highly unlikely that the Supreme Judicial Court would find a solemn occasion in a question posed by the Governor or either House of the Legislature regarding presently contemplated expenditures of funds by municipalities.

In making its determination as to what is a solemn occasion, the Maine Supreme Judicial Court has articulated a standard that it will only find a solemn occasion where the question posed requires immediate resolution in order for the entity posing the question to take an official action, such as adopting a

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law or approving a biennial budget, cf. Opinion of the Justices, 370 A.2d 654, 667 (Me., 1977); Opinion of the Justices, 355 A.2d 341, 389 (Me., 1976); Opinion of the Justices, 147 Me. 410 (1952); Opinion of the Justices, 134 Me. 510 (1937). The Supreme Judicial Court has declined to answer questions where the matters related to existing or prospective actions of public officials other than those with authority to pose the question. Opinion of the Justices, 150 Me. 362 (1952). The Court has also expressed reluctance to pass judgment, through advisory opinions, on actions which have already occurred, Opinion of the Justices, 134 Me. 507 (1936).

In this case, the authority to pose the question rests with the Governor or either House of the Legislature. However, the matters at issue relate to present or contemplated actions of municipal officials. They do not involve legislation presently under consideration, nor do they involve executive decisions relating to expenditure of state funds. For those reasons we believe that while the Governor or either House of the Legislature has authority to pose to the Court any question they wish, it is unlikely that the Supreme Judicial Court would find a solemn occasion in a question relating to expenditure of municipal funds such as discussed in our opinion of September 12, 1977.

Therefore, any dispute regarding the expenditure of municipal funds would have to be resolved by litigation. There are means for relatively prompt resolution of legal disputes through litigation. Those means have been employed in the currently pending dispute regarding the status of certain amendments as competing measures with the initiated legislation. It may be possible for appropriate parties to address and resolve any dispute regarding contemplated municipal expenditures in a similar expeditious manner.

JOSEPH E. BRENNAN
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JEB/ec
cc: Honorable James B. Longley