

MAINE STATE LEGISLATURE

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*Legislature's Appointment Powers
Executive's Appointment Powers
Ma Court Art V PT 1st sec 8*

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November 22, 1977

The Honorable James B. Longley
Governor of Maine
State House
Augusta, Maine 04333

Dear Governor Longley:

We are responding to your letter of October 26, 1977, in which you requested our opinion concerning the constitutionality of statutory appointment provisions for the Food and Farmland Study Commission. The Commission was created by P. & S.L. 1977, c. 65, which provides that it shall have 21 members. Eleven of the members are to be public members appointed by the Governor, after consulting with farming interests, from a list of 22 names provided by the President of the Senate and the Speaker of the House of Representatives. P. & S.L. 1977, c. 65, § 3. Your question is whether limitation of these appointments to the list submitted by the presiding officers of the Legislature unconstitutionally interferes with the Governor's appointment powers (Constitution of Maine, Article V, Part First, Section 8). The answer is negative for the reasons stated below.

We refer for guidance to our opinion to you of September 16, 1977, concerning appointments to the Maine-Canadian Exchange Advisory Commission. That opinion concluded that appointments to the Commission by the presiding officers of the Legislature and service on the Commission by Legislators were unconstitutional in light of the executive functions of the Commission. A corollary of the opinion is that such legislative involvement is constitutionally permissible if the functions of the appointed body are advisory and legislative in nature.

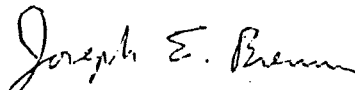
The functions of the Food and Farmland Study Commission are to be informational and advisory only. Its recommendations are to be made to both the Governor and the 109th Legislature. The

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functions are coordinated and for the benefit of both the Legislative and Executive Branches. The Legislature could have decided to make all the appointments itself, since the Commission will do the same work which the Legislature could do through one of its own committees and will perform no executive function. Under these circumstances, it is our opinion that including the Governor in the appointment process statutorily extends the Governor's appointment powers rather than limiting them, even though the appointments will be made from a limited list of proposed appointees. Therefore, we cannot say that this appointment procedure causes a constitutional problem.

It should be noted that the appointment process discussed above is not unique. Appointments to the Board of Examiners for the Examination of Applicants for Admission to the Bar are made by the Governor ". . . on the recommendation of the Supreme Judicial Court." 4 M.R.S.A. § 801. This is another example of a sharing of the appointment process between two branches of government where the functions of the appointees are not essentially identified with the Executive Branch.

Sincerely,



JOSEPH E. BRENNAN
Attorney General

JEB/ec

cc: Hon. Joseph Sewall
Hon. John L. Martin