

MAINE STATE LEGISLATURE

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*Legislative Reapportionment
Reapportionment
Maine Const. Art 4 Pt 1st sec 3*

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 8, 1977

Honorable Walter A. Birt
Chairman Joint Select Committee on Census
33 Pine Street
East Millinocket, Maine 04430

Dear Representative Birt:

You have asked for the opinion of this office on which branch of government, the Legislative or the Judiciary, may act to alter the boundaries of Representative Districts and what procedures would be necessary to accomplish that change.

FACTS:

As you have described the situation, the Joint Select Committee on the Census wishes to have census data from the 1980 Federal census reported by election districts to facilitate the 1983 redistricting of the State mandated by Article IV, Part First, Section 3, of the Maine Constitution, as last amended and ratified by the people of Maine in November, 1975. According to the requirements promulgated by the Bureau of the Census, data may be reported by election districts, if those district boundaries follow either "visible physical features" or "minor civil division boundaries." In reviewing the Maine election districts for compliance with this requirement, your committee has identified two districts which do not conform. These boundaries lie between House Districts 58 and 59 in Rockland, and between House Districts 79 and 80 in Old Town.

The boundaries of the Representative Districts were fixed by order of the Supreme Judicial Court on February 14, 1974, and amended by the Court on March 5, 1974, pursuant to the provisions of Article IV, Part First, Section 3 of the Constitution of Maine, which provided, in pertinent part:

"In the event that the Legislature shall fail to make an apportionment, the Supreme Judicial Court shall, within 60 days following the end of the period in which the Legislature is required to act, but fails to do so, make the apportionment."

QUESTION:

May an apportionment, once accomplished, be changed prior to the time of the next apportionment which is designated by the Constitution, as amended, in 1983, and, if so, which branch of government may make the new apportionment?

ANSWER:

Neither the Legislative nor Judicial branches may make a reapportionment between the periods fixed by the Constitution. No redistricting may occur until 1983.

REASONING:

The question of whether an apportionment, once made, may be altered has been addressed by both the Supreme Judicial Court and this office. Article IV, Part First, Section 2, of the Constitution, under which the apportionment was made, provides:

"The legislature shall, within every period of at most ten years and at least five, cause the number of inhabitants of the state to be ascertained, exclusive of foreigners not naturalized. The number of Representatives shall, at the several periods of making such enumeration, be fixed and apportioned by the Legislature among the several countries. . . ."

In 1851, a question regarding the effect of this section on interim alteration of Representative Districts was posed to the Supreme Judicial Court. Specifically the question presented was:

"Has the Legislature constitutional power, after a general representative apportionment has been made, in conformity with the constitution, to alter the Representative Districts so established, until the next general apportionment?"

In its response, the Supreme Judicial Court, in Opinion of the Justices, 33 Maine 587 (1851), stated:

"When an apportionment of representatives has been made according to these provisions, "among the several counties," it must remain without alteration for five years - for no new enumeration and apportionment can be made within that time, without a violation of that clause of the constitution which provides that the least period for an enumeration shall be five years."

Thus the court indicated that in its opinion, an apportionment, once made, was fixed for a minimum period of five years. The Court also took this position in Opinion of the Justices, 3 Maine 477, 479 (1821) and Opinion of the Justices, 148 Maine 404, 409 (1953).

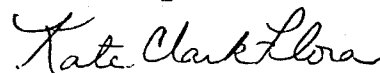
These three Opinions of the Justices were the basis for an opinion of this office issued on February 19, 1963, a copy of which is attached. In that instance, the question was asked whether L.D. 811, which sought to alter the apportionment of Penobscot County, which had been fixed by Chapter 81 and 123 of the Laws of 1961, was constitutional. It was the opinion of this office that it was not.

Where the time requirements for reapportionment are fixed by the Constitution, neither the Supreme Judicial Court, nor the Legislature, possesses the authority to alter the apportionment once it is made until the time for a new apportionment arrives.* It is true that the court amended its order. The amendment, however, was made within the sixty days provided to the court by the Constitution in which to accomplish the apportionment.

It is true that since the 1974 apportionment, Article IV, Part First, Section 2 of the Constitution has been amended. The amendment provides for reapportionment in 1983 and every tenth year thereafter. The reasoning of the court about the prior provision is still applicable to the amended provision. Where the time for reapportionment is fixed by the Constitution, alterations in the interim period are constitutionally impermissible unless necessary for compliance with constitutional requirements for fair representation.

I therefore conclude that alteration by the Supreme Judicial Court of its order apportioning the Representative Districts, as issued February 14, 1974 and amended March 5, 1974, would violate the Maine Constitution. In order to alter the districts as the Joint Committee desires in order to utilize the 1980 census data by Representative Districts, a constitutional amendment will be necessary.

Sincerely,



KATE CLARK FLORA
Assistant Attorney General

KCF:jg
Attachment

* Judicial alteration of a legislative apportionment could become necessary upon a showing of unconstitutional variation in representation. That is not the question considered here.

yes ✓✓

February 19, 1963

Honorable Bradford Wellman
Majority Floor Leader
House of Representatives
State House
Augusta, Maine

Re: L. D. 811 Resolve, Relating to Apportionment
of Representatives from Penobscot County.

Dear Representative Wellman:

You have asked this office for an opinion as to the constitutionality of the above resolve. This resolve seeks to amend the 11th paragraph of Chapter 81 of the resolves of 1961, as amended by Chapter 123 of the resolves of 1961. Chapter 81 of the resolves of 1961 is the resolve apportioning the House of Representatives in accordance with Article IV, Part First, section 2 of the State Constitution.

The second and third sentences of Article IV, Part First, section 2 say:

"The legislature shall, within every period of at most ten years and at least five, cause the number of inhabitants of the state to be ascertained, exclusive of foreigners not naturalized. The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties, as near as may be, . . ."
(Underlining supplied)

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Then the question may be framed as that asked the Supreme Judicial Court in 1851 by the House of Representatives.

"Has the Legislature constitutional power, after a general representative apportionment has been made, in conformity with the constitution, to alter the Representative Districts so established, until the next general apportionment?"

The question and answer appear in Opinion of the Justices, 33 Maine 587:

"When an apportionment of representatives has been made according to these provisions (Article IV, Part First, section 2) 'among the several counties,' it must remain without alteration for five years - for no new enumeration and apportionment can be made within that time, without a violation of that clause of the constitution which provides that the least period for an enumeration shall be five years."

Prior to this time in Opinion of the Justices, 3 Maine at 479 the justices said, in speaking of the same section of the constitution:

"And it was readily perceivable, that as every apportionment made by the legislature must continue five years and may continue ten . . ." (Underlining added).

Likewise in Opinion of the Justices, 148 Maine at 409 the justices said:

"There is nothing in the Constitution which requires the Legislature to state the term of the continuance of any apportionment it makes. If made, it must continue for at least five years." (Underlining added)

Honorable Bradford Wellman

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February 19, 1963

From these three Opinions of the Justices it can be seen that our court has ruled that an amendment to a general apportionment cannot be made until five years have elapsed.

Therefore, we must conclude that Legislative Document 811, Resolve, Relating to Apportionment of Representatives from Penobscot County is unconstitutional.

Very truly yours,

George C. West
Deputy Attorney General

GCW/slf