

MAINE STATE LEGISLATURE

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*Court's Appointment of Judges to 1978
the Court Art 6 sec. 5*

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

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

February 16, 1978

Honorable Donald Carter
House of Representatives
State House
Augusta, Maine

Dear Representative Carter:

This responds to your request that we review House Amendment "A" (H-1040 to L.D. 1957) to determine if the proposed amendment presents any constitutional problems. The proposed House Amendment "A" would establish a Judicial Qualifications Commission, including one Justice of the Superior Court, one Judge of the District Court, and one Judge of the Probate Court appointed by the Supreme Judicial Court, and six other members appointed by the Governor.

You have inquired particularly whether a commission established in such a manner and with the functions contemplated by House Amendment "A" creates separation of powers problems under Article III of the Maine Constitution. We would note that there may be a question of problems with the appointments power under Article V, Part 1, Section 8, of the Maine Constitution. See Curtis v. Cornish, 109 Me. 384 (1912). We do not address either the separation of powers or appointments power question in this opinion, however, because we think that the composition of the proposed commission, including membership of judges, is not consistent with Article VI, Section 5, of the Maine Constitution. Article VI, Section 5 provides:

"No Justice of the Supreme Judicial Court or any other court shall hold office under the United States or any other state, nor under this State, except as justice of the peace or as member of the Judicial Council."

Membership on the Judicial Qualifications Commission would be a state office. Judges would therefore be barred from membership on such commission by the provisions of Article VI, Section 5.

I hope this information is helpful.

Sincerely,

DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec

cc: Hon. Nancy Randall Clark