

# MAINE STATE LEGISLATURE

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LD 4943

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

March 6, 1978

Honorable Donald V. Carter  
House of Representatives  
State House  
Augusta, Maine

Dear Representative Carter:

We are responding to your oral request for an opinion with regard to L.D. 1943, "Resolution, Proposing an Amendment to the Constitution to Grant to the Supreme Judicial Court the Power to Remove a Judicial Officer from Office." The purpose of the bill, as reflected in the title, would be to provide for removal of judicial officers by the Supreme Judicial Court in addition to removal by impeachment or address of both branches of the Legislature. Article VI, Section 4, Constitution of Maine. In addition to amending the foregoing constitutional provision, the bill proposes an additional section 7 to Article VI, to read as follows:

"Section 7. Removal of judicial officers.  
The Supreme Judicial Court shall have  
the power and authority to remove from  
office any judicial officer, including a  
judge of probate, under such terms as  
are provided by statute or by rule of court."  
(Emphasis provided)

Your question concerns the underlined words in the proposed section 7, and the possibility that there could be both a statute and a rule of court, each of which would purport to govern the procedure to be used for such removal. Your question is if a statute and a rule of court were both propounded and there is a conflict in the provisions, which provision would govern?

On the basis of the limited consideration we have been able to give this question within the time we have had available, we are unable to state categorically which of the hypothetically conflicting

provisions would prevail. We have found no judicial opinions concerning similar constitutional provisions. Furthermore, since the resolve in question has not yet been enacted, there is no legislative history to guide us, nor do we believe that reliance upon such history would be proper at this time since the Legislature may still act to resolve ambiguities in the resolve. However, the following general comments are provided for your information.

The general power of the court to prescribe its rules is itself granted by statute and, therefore, would not have the same constitutional stature as an enactment of the Legislature. 4 M.R.S.A. §§ 8 and 9. This analysis is supported by decisions of the Supreme Judicial Court which indicate that a rule of court may not change or enlarge a statute and that the statute would control. Nissen v. Flaherty, 117 Me. 534 (1918); In Re Knapp's Estate, 145 Me. 189 (1950).<sup>1/</sup> However, while rules of court thus are generally subordinate to statutes, the proposed new Article VI, Section 7, appears to give a rule of court concerning removal of judicial officers a constitutional recognition and status which rules of court did not previously have.

In light of this constitutional recognition, we cannot definitely say that a conflicting statute would prevail, as would be the case otherwise.

Since your question raises a point which cannot be definitely answered by our office, it is suggested that the Legislature may wish to consider amendment to the bill which would give clarification.<sup>2/</sup>

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<sup>1/</sup> 4 M.R.S.A. §§ 8 and 9, as presently written, contain provisions which state "after the effective date of said rules as promulgated or amended, all laws in conflict therewith shall be of no further force or effect." However, this provision is itself statutory and could be amended. Furthermore, this provision does not cover the possible situation where the conflicting statute is enacted subsequent to adoption of the rule of court.

<sup>2/</sup> Proposed Senate Amendment "A" to L.D. 1943 would have avoided a possible conflict by deleting the words "or by rule of court." However, it is our understanding that this amendment has not been offered to date. Other approaches to clarification may be possible. For example, one alternative would be to add after "or" the words 'in the absence of statute.' Another alternative would be to add after "court" the words 'not inconsistent with any statute.'

The foregoing opinion is given on the basis of limited research, though there appears to be little law on the subject. We will endeavor to look at the question more closely if you wish. Please continue to call on us whenever we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP  
Assistant Attorney General

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