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Executive Powers Separation From Legislature -
Maine Const Art III
Maine Const Art V sec. 1
Maine Const Art I sec. 8

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
March 31, 1978

To: Andy Brown, Executive
From: Donald G. Alexander, Deputy Attorney General
Re: L.D. 2172 - State House Commission Legislation

This responds to your memorandum of March 29. By that memorandum you raise questions as to whether L.D. 2172 presents any constitutional problems. L.D. 2172 creates a commission to make decisions regarding improvement and alteration of the State House and State House grounds. The Commission would be headed by the Maine Historic Preservation Director with six other decision-making members appointed by the Legislative Council.

In light of the necessity of a prompt response because of the deadlines within which the Governor must act on legislation, we have not been able to perform extensive research on this matter. However, it would be our view that L.D. 2172 does appear to present a constitutional problem involving at least the separation of powers clause, Article III, or the executive powers clause, Article V, of the Maine Constitution.

Article III of the Maine Constitution reads as follows:

"Section 1. The power of this government shall be divided into three distinct departments, the legislative, executive and judicial.

"Section 2. No person or persons, belonging to one of these departments, shall exercise any of the power properly belonging to either of the others, except in the cases herein expressly directed or permitted."

Thus, Article III prohibits any person who is with one branch of government from performing functions which are within the province of either of the other two branches of government.

L.D. 2172 is subject to differing interpretations which this opinion does not resolve. However, either interpretation would appear to present problems under the Maine Constitution. Under one interpretation, L.D. 2172 would continue the present status of administrative jurisdiction over the State House as a function of the executive branch of government. (See: 5 M.R.S.A. § 1742, sub-§ 15). If that were the case, then the capacity of the Legislature to appoint members to a commission which will have final decision-making authority on an executive matter would appear inconsistent with the provisions of Article III and also of Article V, Section 1 of the Constitution which vests executive power with the Governor. There may also be a problem with Article V, Section 8 of the Constitution, which reserves executive appointive powers to the Governor, subject to certain exceptions. A greater discussion of the general problem is provided in the opinion of this office relating to the Maine-Canadian Exchange Advisory Commission dated September 16, 1977, a copy of which is attached.

L.D. 2172 may also be construed as a legislative decision making a basic change in operations of the State Capitol. That is, the State Capitol itself is to be considered primarily a legislative building, thus subject to the jurisdiction and control of the Legislature, rather than the ultimate jurisdiction of the executive branch. There is ample precedent for such legislative jurisdiction as, for example, the Congress of the United States, not the executive branch, controls the United States Capitol and the adjacent office buildings. Further, if the building was deemed primarily legislative, there would be no problem with control of the building and the grounds being exercised under the jurisdiction of the Legislature as the administration and supervision of legislative properties, although similar to functions of the executive, is still a proper legislative function. However, if L.D. 2172 is construed in this manner, designation of the Maine Historic Preservation Director as permanent chairman of the State House Commission likewise runs afoul of Article III of the Maine Constitution, since, as an executive official, the Director would be barred from performing legislative functions if control of the building is to be deemed essentially a legislative matter. In such case, of course, the other appointees to the Commission by the Legislature would be valid. Further, there would be no problem with the membership on the Commission by the Director of the State Museum, the Arts and Humanities Bureau, the Bureau of Public Improvements since these officials would appear to serve the Commission in an advisory, rather than determinative, role and, serving in an advisory role, do not create problems under Article III.

I hope this information is helpful. If you need further information, we will try to provide it.


DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec

cc: Hon. John L. Martin
Hon. Joseph Sewall
Hon. David Huber
Hon. Gerard Conley
Hon. Peter Danton