

# MAINE STATE LEGISLATURE

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April 11, 1978

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

Dear Governor Longley:

This responds to your request for an opinion as to the status of certain nominations to the Maine Labor Relations Board. The questions are posed in light of 3 M.R.S.A. § 151. That section requires that, where nominations are submitted by the Governor, a vote on the nomination shall be taken by the legislative committee responsible for recommending confirmation within 20 days from the date of the Governor's written notice of nomination, and the Senate vote on the appropriate committee's recommendation shall occur no later than 45 days from the date of the Governor's written notice of the nomination.

The nominations in question were submitted by written notice on February 15, 1978. The nominations were referred to the Joint Standing Committee on Labor. The Committee met and considered the nominations and determined to table the nominations without taking a final vote. Therefore, no committee recommendation has been forwarded to the Senate and subsequently, there has been no Senate vote on the submitted nominations.

Both the 20-day time period required for committee action and the 45-day period required for Senate action by Section 151 have elapsed.

The statute in question is unequivocal in specifying the time limits within which it intends that committee and Senate action be taken. Therefore, the question focuses on what occurs should those time periods not be met.

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A review of Section 151 and other sections of law discloses no sanction which attaches to the failure of a committee or the Senate to act.\* Lacking a sanction which would specify that the nomination be disapproved, approved or moved to the next step in the process if an appropriate time limit is not met, the nominations must be deemed to be still pending before the Committee on Labor and the Senate.

Although there is no sanction specified in the statute, questions might also arise as to whether the Committee or the Senate could be forced to act through a court action. The court action contemplated would be an action equivalent to the common law Writ of Mandamus. Pursuant to such an action, the Legislature would be called upon to act on the nomination in accordance with the terms of the statute. However, we believe that Maine courts would not issue the appropriate orders to require such action.

The confirmation process is essentially a legislative process established by Article V, Pt. First, Section 8 of the Maine Constitution as amended in 1975. In Section 8, the general procedures for committee and Senate consideration, but not the deadlines, are specified.

In 1972, the Maine Supreme Judicial Court, when requested to mandate an action that was within the province of the executive, declined to do so on the grounds that such a mandate would violate the doctrine of separation of powers as expressed in Article III of the Maine Constitution. Kelly v. Curtis, 287 A.2d 426 (Me. 1972.)\*\* See also In Re Dennett, 32 Me. 508 (1851), Rice v. Draper, 93 N.E. 821 (Mass. 1911). In Kelly, the Court affirmed the continuing validity of the principle "that one co-ordinate branch of government must refrain

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\* While there is no sanction for the Committee not voting, it should be noted, by comparison, that, where the Committee reaches a tie vote, the tie vote shall be considered equivalent to a recommendation that confirmation be denied.

\*\* In Kelly, the Court stated that the governor had a duty to act to call a special election pursuant to Art. IV, Pt. 3, Sec. 18 of the Maine Constitution. However, it declined to order the governor to do so.

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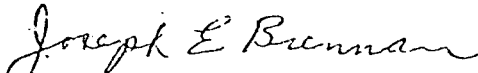
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from ordering another branch to perform its official duty" 287 A.2d 426 at 429. We think it highly likely that, when called upon to mandate an action which is specified to be a legislative act by the constitution, the court would likewise decline to exercise its powers to order the Legislature to take a legislative act in light of the separation of powers clause in the Maine Constitution.

For that reason we believe that the nominations must currently be considered as pending. There is no statutory sanction of approval or disapproval or otherwise for failure to meet the limits of time. Further, we do not believe that the matter can be resolved by other than legislative means. Opinion of the Justices, 148 Me. 404 (1953).

I hope this information is helpful.

Sincerely,

  
JOSEPH E. BRENNAN  
Attorney General

JEB:DA:we

cc: Legislative Leadership  
Honorable Samuel W. Collins, Jr.  
Honorable Cecil H. McNally  
Honorable David W. Bustin