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July 21, 1978

Honorable Walter A. Birt
33 Pine Street
East Millinocket, Maine 04430

Dear Representative Birt:

I am responding to your request for an opinion of this office on a question concerning reconsideration of legislative votes to override gubernatorial vetoes. The question stems from the constitutional provisions for such legislative action set forth in Article IV, Part Third, Section 2 of the Constitution of Maine, which reads, in pertinent part:

> "Every bill or resolution . . . which shall have passed both Houses, shall be presented to the Governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the House, in which it shall have originated, which shall, . . . proceed to reconsider it. If after such reconsideration, two-thirds of that House shall agree to pass it, it shall be sent together with the objections, to the other House, by which it shall be re-considered. . . ."

In your question you have stated that during the 108th Legislature some of the Governor's vetos were sustained in one of the legislative bodies initially and then voted on again, presumably pursuant to a motion to reconsider that body's previous vote. Your question is whether the vote of one of the legislative bodies pursuant to the constitutional requirement of reconsideration is itself a proper subject for a motion to reconsider. You also noted that such motions to reconsider are permitted by the rules of both the House of Representatives and the Senate (e.g. Joint Rule #4).

Although the question has constitutional implications in light of its subject matter, it would normally be raised only in the

context of a parlimentary ruling. Since each House of the Legislature determines its rules of procedure (Article IV, Part Third, Section 4, Constitution of Maine), the question would be most appropriately decided by the presiding officer of the body in which it is raised, subject to appeal to the membership. However, in order to be of assistance to you and to presiding officers should this question be raised in the future, we provide the following inform tion.

Our research has not disclosed a wealth of precedent on this question. Furthermore, what precedent there is seems divided. One line of authority stems from an 1844 parlimentary ruling in the United States House of Representatives. 5 Hind's Precedents of the House of Representatives, page 322, § 5644 (copy attached for your information). Speaker John W. Jones ruled that a motion to reconsider a vote sustaining a presidential veto was out of order. The ruling, which was upheld on appeal, was based on the theory that the House was voting on the vetoed legislation only because the Constitution so provided and once a vote was taken, the House had exhausted its power and could not again reconsider its vote. This precedent has been cited favorably in several recognized parlimentary treatises.1/

A second line of authority stems from judicial decisions in two states on this question. A South Carolina court has taken the position that the constitutional veto reconsideration provision must be read together with the provision that each house shall make its own rules of procedure. The Court concluded that if a motion to reconsider is the established parlimentary rule of the body, such motion is in order after a vote on a veto. State ex rel Coleman v. Lewis, 186 S.E. 625 (S.C., 1936). The Massachusetts court has considered the matter twice. Nevins v. City Council of City of Springfield, 116 N.E. 881 (Ma., 1917); Kay Jewelry Co. v. Bd. of Registration in Optometry, 26 N.E.2d 1 (Ma., 1940). In both cases the Court noted the 1844 House of Representatives precedent, but in Nevins the Court also noted an opposite ruling in the United States Senate in 1856. In Kay Jewelry Co. the Court voiced

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1/ Brown, Jefferson's Manual and Rules of the House of Representatives (95th Congress) p. 50, § 109 (1977)

Cannon's Procedure in the House of Representatives, p. 468 (1963)

Cushing, Law and Practice of Legislative Assemblies, p. 924, § 2386 (1874)

Hughes' American Parlimentary Guide, p. 287, § 643 (1926)

Wilson, A Digest of Parlimentary Law, p. 292, § 2151 (1869)

its opinion that the Massachusetts Constitution contains no express limitation on motions to reconsider and, therefore, legislative power is not exhausted after the first vote. Both cases noted that the practice in Massachusetts has been to allow the motion and concluded that this was permissible if recognized in the applicable rules of procedure. These three cases have been cited with approval in Mason, Manual of Legislative Procedure, p. 310 § 458 (1975).

The foregoing discussion indicates the existence of substantial precedent for either decision on the question. However, this is a decision which would have to be made ultimately by the presiding officer of the legislative body.

Please continue to call on us whenever we may be of assistance.

Sincerely,

S. Kirk Studstrup

S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe
Enclosure

cc: President of the Senate
Speaker of the House

Mr. Jones having appealed, on February 2 the decision of the Chair was sustained.[1]

**5644. The motion to reconsider may not be applied to the vote on reconsideration of a bill returned with the objections of the President.**—On June 12, 1844,[2] a motion was made by Mr. Orville Hungerford, of New York, to reconsider the vote by which the House on the previous day refused, on reconsideration, to pass the bill (No. 203) entitled "An act making appropriations for the improvement of certain harbors and rivers," which had been returned with the objections of the President.

The Speaker[3] decided that inasmuch as the vote now proposed to be reconsidered was taken in a manner expressly provided for by the Constitution of the United States, and having been thus taken, the decision must be considered final, and no motion to reconsider was in order.

From this decision Mr. John Quincy Adams, of Massachusetts, appealed.[4] After debate the Chair was sustained by a vote of 97 to 85.

**5645. The motion to reconsider may not be applied to the vote on a motion to suspend the rules.**—On January 13, 1851,[5] Mr. Williamson R. W. Cobb, of Alabama, having called up the motion submitted by him on Tuesday previous to reconsider the vote by which the House, on the previous day, had refused to suspend the rules, so as to enable the gentleman from Indiana [Mr. George W. Julian] to present the memorial of the meeting of Anti-slavery Friends, held at Newport, Ind., on the subject of slavery and the repeal of the "Fugitive-slave law."

The Speaker[6] stated that, when he permitted this motion to be entered upon the Journal, he expressed doubts as to the propriety of entertaining it. Subsequent examination of the subject had confirmed him in the opinion that a motion to reconsider a vote upon a motion to suspend the rules was not in order. He therefore ruled the motion out of order.

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[1] For statement of the practice in regard to the motion to reconsider, see Globe, p. 510, February 4, 1853. (Second session Thirty-second Congress.)

[2] First session Twenty-eighth Congress, Journal, pp. 1093, 1097; Globe, pp. 665–675.

[3] John W. Jones, of Virginia, Speaker.

[4] On June 13 Mr. Adams gave his reasons for the appeal. He said the Constitution provided that the bill should be reconsidered with the President's objections. Reconsideration implied deliberation. But the vote had been taken under the operation of the previous question, which allowed no deliberation. Therefore the provision of the Constitution had been violated.

The Speaker, replying, asked how it was that a motion to reconsider was ever entertained? It was only in virtue of the rules of the House. The bill was passed some days ago, and it was no sooner passed than a motion was made to reconsider it. That motion was rejected; all power under the rule was exhausted. Had it ever been heard of that a motion to reconsider, being once rejected, could be renewed? There was, however, a power higher than the rules which provided that whenever a bill was returned by the President of the United States with objections it was the duty of the House to proceed to reconsider it. Without that provision of the Constitution the House could never again have touched the bill; and the requirement of the Constitution having been complied with, there was no power in the House to touch the subject again.

Messrs. Thomas H. Bayly and George C. Dromgoole, of Virginia, replied to the point made by Mr. Adams, Mr. Dromgoole contending that Mr. Adams had confounded discussion with consideration.

[5] Second session Thirty-first Congress, Journal, p. 134; Globe, pp. 182, 225.

[6] Howell Cobb, of Georgia, Speaker.