

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Legislature's Vote on Constitutional Amendments
Constitutional Amendments (Vote)
Me. Const. Art. 10 sec 4

DM

JOSEPH L. 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

August 18, 1978

Honorable Louis Jalbert
39 Orestis Way
Lewiston, Maine 04240

Dear Representative Jalbert:

We are responding to your oral request for an opinion from this office on a question concerning legislative voting on proposed constitutional amendments. Amendments to the State Constitution are governed by Article X, Section 4, which reads in pertinent part:

"The Legislature, whenever two-thirds of both Houses shall deem it necessary, may propose amendments to this Constitution;
. . . "

Your question is whether the term "two-thirds of both Houses" means that the proposed amendment must be passed by two-thirds of all legislators elected to serve in the respective body or, alternatively, whether passage may be by two-thirds of the members of the body who are present and voting. Our answer is that if there is a quorum present in the Legislative body, the Constitution requires a two-thirds vote of the members present and not a vote of two-thirds of the entire membership present or absent.

Questions of this nature may be considered parliamentary questions which are appropriately answered by the presiding officer of the legislative body involved. However, in this case we believe the answer is so clear that we do not hesitate to provide that answer as an opinion of this office.

The provision of Article X, Section 4 of the Maine Constitution in question has not been the subject of a parliamentary ruling which we could find recorded or the subject of interpretation by the Maine Judiciary. However, Article V of the United States Constitution

with regard to amendments thereof is virtually identical to the provision in the Maine Constitution,^{1/} and has been subject to both parliamentary and judicial interpretation. In 1898 the Speaker of the United States House of Representatives, Thomas B. Reed of Maine, ruled in response to a point of order that the two-thirds requirement meant two-thirds of the Representatives present. In making his ruling, Speaker Reed states, among other things:

"The provision of the Constitution says 'two-thirds of both Houses.' What constitutes a House? A quorum of the membership, a majority, one-half and one more. That is all that is necessary to constitute a House to do all the business that comes before the House. Among the business that comes before the House is the reconsideration of a bill which has been vetoed by the President; another is a proposed amendment to the Constitution; and the practice is uniform in both cases that if a quorum of the House is present the House is constituted and two-thirds of those voting are sufficient in order to accomplish the object."
5 Hinds' Precedents of the House of Representatives, pp. 1009-1010.

Speaker Reed also noted with regard to this question that the first amendment to the United States Constitution proposed by the First Congress, which included as members many of those who had been directly involved in the constitutional convention, was passed upon a vote of 37 in favor out of a total elected membership of 65. Thus, the framers of the Constitution themselves apparently believed that the term meant two-thirds of those present rather than two-thirds of the entire elected membership. A ruling similar to that of Speaker Reed's had been made previously in the United States Senate in 1869. 5 Hinds' Precedents of the House of Representatives, p. 1010.^{2/}

1/ The parallel provision in the United States Constitution reads:

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution. . . ."

2/ See also 1 Cooley's Constitutional Limitations, 8th ed. (1927), p. 70.

The provision of the United States Constitution with regard to amendments has also been the subject of interpretation by the United States Supreme Court. On both occasions that the Court has dealt specifically with this question, it has arrived at the same conclusion as that of Speaker Reed and has ruled that constitutional amendments proposed by two-thirds of the federal legislative bodies present had been constitutionally proposed. Missouri Pacific R. Co. v. Kansas, 248 U.S. 276 (1919); State of Rhode Island v. Palmer (The National Prohibition Cases), 253 U.S. 350 (1920).

We have searched for precedent in other states also. Generally speaking, there has been very little interpretation of constitutional provisions of this type, perhaps because many other states have much more specific wording - a specified portion of "all members elected to each House" (e.g. Kentucky, Virginia and Rhode Island). In one case, State v. State Board of Equalization, 230 P. 743 (Okla., 1924), the State Court did interpret terminology similar to that used in Maine as meaning two-thirds of all the Representatives elected. However, the wording of the Oklahoma provision is different from that of the provision in Maine since the context also referred to "a majority of all the members elected to each of the two Houses." The Court made it clear that they were basing their interpretation upon this context and that if the two-thirds provision stood by itself, as it does in Maine, their answer would have been different.

There are two other points which should be mentioned in support of our opinion. First, it is clear that if it had been intended to have the two-thirds of both Houses refer to the entire elected membership, the provision could have been phrased that way, as it is in Article IV, Part Third, Section 16. That provision, concerning the effective date of acts, provides an exception for emergency legislation passed ". . . by a vote of two-thirds of all the members elected to each House. . . ." Second, in examining questions which relate to parliamentary law, the past practices or usages of the legislative body do have precedential value. Mason, Manual of Legislative Procedure, 1975, § 39, pp. 53-55. Examples of the legislative procedure used for past amendments to the Maine Constitution clearly show that two-thirds of the members of a body

present at the time of the vote is sufficient to properly pass a constitutional proposal.^{3/}

On the basis of the foregoing, we believe that the answer to your question is quite clear. If we can assist you in any other way, please do not hesitate to call upon us.

Sincerely,

Joseph E Brennan
JOSEPH E. BRENNAN
Attorney General

JEB:mfe

cc: President of the Senate
Speaker of the House

3/ Examples of past practices of the Maine Legislature indicating the acceptability of two-thirds of the membership present, include the following:

1. In 1834 the first amendment to the Constitution was passed in the House of Representatives on a vote of 117-52 and the membership of the House at that time was 186.
2. In 1837 the second amendment to the Constitution was passed by the House of Representatives by a vote of 97-14, and the membership at that time was 186.
3. In 1844 the Fifth Amendment to the Constitution was passed by the House of Representatives on a vote of 100-34, and the membership at that time was 151.
4. In 1868 the Eleventh Amendment to the Constitution was passed in the House of Representatives by a vote of 84-5, and there were 151 members. The journal entry for this vote reads in part:

"and the question being on finally passing the same [the constitutional amendment proposal], requiring a two-thirds vote. . ."
5. In 1879 the Senate, which then had a membership of 31, passed a constitutional amendment proposal on a vote of 15-2.