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#79-58

March 27, 1979

Honorable John L. Martin
Speaker of the House
State House
Augusta, Maine 04333

Dear Speaker Martin:

You have inquired as to the procedure the Legislature should follow in dealing with initiative petitions which the Secretary of State has certified as valid pursuant to 21 M.R.S.A § 1355. More specifically, you have asked whether the matter should be referred to the Judiciary Committee for a further examination of the sufficiency of the petitions or whether it should be referred to the appropriate committee for a consideration of the merits of the proposed legislation.

As with all questions of legislative procedure, the ultimate determination rests with the Legislature, and thus my response is intended solely to assist in that determination. Subject to the preceding qualification, it is my opinion that the Legislature should not conduct an additional inquiry into the validity of the petitions; rather, the initiative question should be referred to committee for a consideration of the substance of the proposed bill.

Prior to the adoption of the present version of art. IV, pt. 3, § 22 of the Maine Constitution in 1975 and the enactment of 21 M.R.S.A. § 1355 in 1976, there was no constitutional or statutory procedure for reviewing the validity of intiative petitions. See, Report of the Judiciary Committee on the Initiative and Referendum Process, p. 8 (submitted to the Maine Legislature on December 2, 1974) (hereinafter "Judiciary Committee Report"). As a matter of practice, this function was performed by the Judiciary Committee.

Dissatisfaction with this approach helped to bring about the study by the Judiciary Committee, which ultimately resulted in the adoption of the constitutional amendment and statute referred to above.

Article IV, pt. 3, § 22 of the Maine Constitution provides as follows:

> "§ 22. Election officers and officials, how governed
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> "Section 22. Until the Legislature shall enact further laws not inconsistent with the Constitution for applying the people's veto and direct initiative, the election officers and other officials shall be governed by the provisions of this Constitution and of the general law, supplemented by such reasonable action as may be necessary to render the preceding sections self executing. The Legislature may enact laws not inconsistent with the Constitution to establish procedures for determination of the validity of written petitions. Such laws shall include provision for judicial review of any determination, to be completed within one hundred days from the date of filing of a written petition in the office of the Secretary of State." (emphasis added)

As the emphasized language indicates, § 22 specifically authorized the Legislature to enact laws establishing procedures for determining the validity of initiative petitions. Pursuant to that authorization, the Legislature enacted 21 M.R.S.A. § 1355. Succinctly stated, § 1355 requires the Secretary of State to make the determination and allows any voter to appeal his decision to the Superior and Supreme Judicial Courts.

Since the review procedure created by 21 M.R.S.A. § 1355 derives from specific constitutional authorization, it is my opinion that the Legislature should not make an independent assessment of the validity of the petitions. This conclusion is supported by the history of art. IV, pt. 3, § 22 and 21 M.R.S.A. § 1355, which reveals that a major factor in the adoption of both the constitutional amendment and the statute was the desire to remove from the Legislature the responsibility for reviewing petitions.

> "A committee of the Legislature should not determine the validity of signatures and petitions for initiatives. The Secretary of State should have this authority, which is not now clearly established in the Constitution or the statutes. It should be clearly established who has the right to challenge signatures and petitions. There should be a procedure for hearings on the validity of petitions to be held before the Secretary of State, within specified time periods, and there should be provision for appeal to the courts, within specified time limits, from an adverse decision by the Secretary of State.
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> The committee, although the Legislature had in the past been assigned the duty of reviewing petitions, agreed that there should be a different procedure. There is no clear authority for the Legislature's assumption of this role. If such a procedure were spelled out, the committee felt that the Legislature's role should be limited, because of the intent of the initiative and referendum process is to enable the people to exercise legislative power independently of the Legislature." Judiciary Committee Report, at 22.1/

An additional argument against a legislative determination of the validity of initiative petitions is found in the language of art. IV, pt. 3, § 22, which provides that "[s]uch laws shall include provision for judicial review of any determination." Accordingly, once the Legislature creates a statutory review process, as it did in enacting 21 M.R.S.A. § 1355, judicial review becomes constitutionally mandated. It is thus reasonable to assume that the Constitution contemplates that the courts are to be final arbiter of the validity of contested initiative petitions.

1/ The policy considerations invoked by the Committee seem particularly significant. The initiative is the process whereby the people reassert control over the legislative power which they have granted to their elected representatives. See, art. I, § 2 and art. IV, pt. 1, § 1, of the Maine Constitution. Since resort to that process is most likely to occur when the people disapprove of the actions of their Legislature, the danger of vesting in the Legislature the authority to determine the sufficiency of initiative petitions would seem apparent.

Since there does not appear to be any procedure for judicial review of an independent legislative inquiry into this matter[2/], such an inquiry would vitiate the constitutional requirement of judicial review.[3/]

For the foregoing reasons, it is my opinion that initiative petitions, certified as valid by the Secretary of State, should not be referred to the Judiciary Committee for a further determination of their sufficiency. The matter should instead be referred to the appropriate committee for a consideration of the merits of the proposed legislation.

Please feel free to call on me if I may be of any further service.

Sincerely,

RICHARD S. COHEN
Attorney General

RSC/ec
cc: Legislative Council

2/ Even if a procedure could be found in existing law for appealing a legislative determination of the sufficiency of the petitions, there would be no way to guarantee that the appeal could be completed within the 100-day period mandated by art. IV, pt. 3, § 22.

3/ The argument that the Constitution vests in both the legislative and judicial branches the authority to make a final decison on the petition also runs counter to the "separation of powers" doctrine. Such overlapping authority could produce a constitutional crisis if the two branches were to reach conflicting results.