RICHARD S. COHEN
ATTORNEY GENERAL

STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

Diamond

#79-63

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 3, 1979

Honorable Donald Carter
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Carter:

You have inquired about the constitutionality of a proposed amendment to Joint Rule 37 of the 109th Maine Legislature. As I understand it, the proposal would preclude the resubmission of any bill which had been previously introduced at any time during the preceding year. The rule would apply whether the attempted reintroduction of the measure occurred at the first regular session, the second regular session or at a special session.1/

As this office has indicated in the past, interpretations of the terms of the Constitution relating to the business of the Legislature are primarily matters within the discretion of the Legislature to determine. Accordingly, this response is intended to assist the Legislature in making that determination.

1/ Even under your amendment, legislation could be reintroduced within the one-year period whenever two-thirds of the members present in each House voted to suspend the rules, assuming present Joint Rule 9 were in effect. Since Rule 37 already provides that no measure which has been finally rejected in any first regular session may be introduced at any second regular or special session except by a two-thirds vote, it is debatable whether your proposal would affect the practice at second regular and special sessions.

Prior to discussing the constitutional question, I should point out that a particular legislature cannot, through its rule-making authority, place restrictions upon the bills which future legislatures may consider. It is well settled that rules of procedure expire with the legislature adopting them. Tayloe v. Davis, 102 So. 433 (Ala. 1924); Mason, Manual of Legislative Procedure, 43; 81A C.J.S. States § 52 (1977). Thus, your proposed amendment would not limit the measures which could be introduced at the 110th Legislature unless that body readopted the rule as amended.

Subject to the above qualification, the issue you raise is governed by the principle that a state legislature has complete authority to control its procedure except as limited by constitutional provisions.2/ Mason, supra at 31. In other words, your amendment would be constitutional except as to those bills which the Maine Legislature is constitutionally mandated to consider. The question becomes, then, whether there are any measures which fall within this category.

In considering this question, there are four sections of the Maine Constitution which appear to require interpretation. These include: (1) art. IV, pt. 3, § 1, which specifies the legislation which may be admitted at a second regular session; (2) art. IV, pt. 3, § 18, which provides for direct initiative by the electors; (3) art. V, pt. 1, § 9, which requires the Governor to recommend measures to the Legislature; and (4) art. V, pt. 1, § 13, which authorizes the Governor to convene emergency sessions.

While it is my ultimate conclusion that none of the above provisions require the Legislature to consider particular legislation, the lack of precedent dictates some analysis of each section.

2/ We express no opinion as to the effect, under your proposed amendment, of the enactment of a statute the terms of which might be construed to require legislative reconsideration of a particular matter within the one-year period. We deem it advisable to defer that question until the situation actually arises.

1) Art. IV, pt. 3, § 1.

The relevant language of this section reads as follows:

> ". . . the business of the second regular session of the Legislature shall be limited to budgetary matters; legislation in the Governor's call; legislation of an emergency nature admitted by the Legislature; legislation referred to committees for study and report by the Legislature in the first regular session; and legislation presented to the Legislature by written petition of the electors under the provisions of Article IV, Part Third, Section 18. . . . "

Simply stated, the issue is whether the above provision commands the Legislature to consider the types of bills listed therein.

Both the language and history of art. IV, pt. 3, § 1 suggest that it was intended solely as a restriction on the business of a second regular session. This is most clearly demonstrated by the choice of the phrase "shall be limited to." Furthermore, the debate on the measure reveals a concern that there would not be popular acceptance of annual sessions absent a constitutional provision limiting their scope. As stated by Representative McMahon,

> "[The people] will certainly not approve [annual sessions] without some kind of time limit or limitation on what might be introduced." Legislative Record - House, April 23, 1975, p. B653.

In light of the foregoing, there is no justification for converting what was intended as a limitation into a mandate.

2) Art. IV, pt. 3, § 18.

Article IV, pt. 3, § 18 sets out in considerable detail the manner in which the electors may propose bills to the Legislature.

> § 18. Direct initiative of legislation; number signatures necessary on direct initiative petitions
>
> "Section 18. The electors may propose to the Legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the State Constitution,

by written petition addressed to the Legislature or to either branch thereof and filed in the office of the Secretary of State by the hour of five o'clock, p.m., on the fiftieth day after the date of convening the Legislature in regular session. If the fiftieth day is a legal holiday, the period runs until the hour of five o'clock, p.m., of the next day. Any measure thus proposed by electors, the number of which shall not be less than ten percent of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition, unless enacted without change by the Legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the Legislature, and in such manner that the people can choose between the competing measures or reject both. When there are competing bills and neither receives a majority of the votes given for or against both, the one receiving the most votes shall at the next general election to be held not less than sixty days after the first vote thereon be submitted by itself if it receives more than one-third of the votes given for and against both. If the measure initiated is enacted by the Legislature without change, it shall not go to a referendum vote unless in pursuance of a demand made in accordance with the preceding section. The Legislature may order a special election on any measure that is subject to a vote of the people. The Governor may, and if so requested in the written petitions addressed to the Legislature, shall, by proclamation, order any measure proposed to the Legislature as herein provided, and not enacted by the Legislature without change, referred to the people at a special election to be held not less than four nor more than six months after such proclamation, otherwise said measure shall be voted upon at the next general election held not less than sixty days after the recess of the Legislature, to which such measure was proposed. If the Governor is requested in the written petition to order a measure proposed to the Legislature and not enacted without change to be submitted to the people at such a special election and if he fails to do so by proclamation within ten days

> after the recess of the Legislature to which the measure was proposed, the Secretary of State shall, by proclamation, order such measure to be submitted to the people at a special election as requested, and such order shall be sufficient to enable the people to vote."

While the section appears to contemplate that the Legislature will consider the electors' proposal on its merits, nothing in the language of the section warrants the conclusion that such consideration is mandatory.

The purpose of the direct initiative is to allow the people to assert direct control over the legislative power. A failure by the Legislature to enact a proposed bill without changes gives rise to the requirement that the matter be submitted to the electors. Accordingly, the conclusion that a legislative rule could constitutionally preclude consideration by the Legislature of a § 18 petition in no way diminishes the ultimate power of the people.[3/]

3) Article V, pt. 1, § 9 and article V, pt. 1, § 13.

Insofar as both of the above sections deal with the Governor's role in initiating legislation, they may be analyzed together. The sections read in relevant part as follows:

3/ The argument that § 18 does not require legislative consideration of the petition is bolstered by the constitutional language reserving to the people the right to initiate legislation. Article IV, pt. 1, § 1, recites in relevant part that "the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the Legislature. . . . " (emphasis added). As the emphasized language indicates, the initiative power was created so as to allow the people to legislate without the need to rely upon legislative action.

"§ 9. To give information and recommend measures

"Section 9. He shall from time to time give the Legislature information on the condition of the State, and recommend to their consideration such measures as he may judge expedient."

§ 13. Convene the Legislature on extraordinary occasions. . .

"Section 13. He may, on extraordinary occasions, convene the Legislature. . . . "

With respect to each section, the salient question is whether the Legislature may constitutionally refuse to permit the introduction of a measure recommended by the Governor under § 9 or proposed by him in a "special session" convened under § 13 on the ground that the same measure has been considered within the past year.

Once again, the absence of precedent requires that the obligation of the Legislature under §§ 9 and 13 be determined largely on the basis of the wording of those provisions. In that light, it is significant that neither section expressly imposes any duty on the Legislature to consider bills submitted by the Governor. Absent such language, it is impossible to conclude that the Legislature lacks the power to decide by rule the circumstances under which such bills will be considered.

The above conclusion comports with the doctrine of the separation of powers, upon which our system of government rests. Under that doctrine, the "whole of their sovereign powers of legislation" is conferred by the people upon "the legislative department of government." Baxter v. Waterville Sewerage District, 146 Me. 211, 215 (1951). As explained by a leading authority, the role of the chief executive in the legislative process is extremely limited.

"The power of the governor as a branch of the legislative department is almost exclusively confined to the approval of bills. As executive, he communicates to the two houses information concerning the condition of the state, and may recommend measures to their consideration, but he cannot originate or introduce bills." Cooley's Constitutional Limitations, 325 (8th Ed. 1923) (emphasis added)

To summarize, the Constitution grants to the Legislature the power to make laws. Inherent in that grant is the concomitant authority to determine when that power shall be utilized.

> "The existence of the power being granted, of the necessity of its exercise, the Legislature must be and is the sole judge." Sawyer v. Gilmore, 109 Me. 169, 175 (1912).

Since members of the Legislature have the exclusive right to introduce bills, we see nothing unconstitutional in a self-imposed restriction upon when that right may be exercised. Thus, it is our view that your proposed amendment to Joint Rule 37 would not violate the Maine Constitution.4/

Please contact my office if we may be of further assistance.

Sincerely,

RICHARD S. COHEN
Attorney General

RSC/ec
cc: Honorable John L. Martin
Honorable Joseph Sewall

4/ As discussed previously, we do not read your amendment to Joint Rule 37 to affect in any way the power of the people to initiate legislation.