

MAINE STATE LEGISLATURE

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17 January 1980

80-9

The Honorable John L. Martin
Speaker of the House
STATE OF MAINE
State House
Augusta, Maine 04333

Dear Mr. Martin:

In your letter earlier last fall, you asked who should convene the initial meeting of the Joint Select Committee on De-commissioning of Nuclear Generating Facilities and how should the chairman of that committee be chosen when the legislation creating the committee did not so specify. In a related letter, you asked who should convene the Maine-Canadian Legislative Advisory Commission. In addition you requested some general guidelines when legislation establishing a committee is silent on these questions, particularly where there is more than one appointing authority.

The answers to your questions depend in the first instance on whether the Legislature is in session. When the Legislature is not in session the common law rule is that committees of the Legislature are without power to sit in the absence of specific statutory authorization. Ex parte Caldwell, 61 W.Va. 49, 55 S.E. 910 (1906); 72 Am.Jur.2d., States §51 (1974). Our Legislature has modified this common law rule by providing that Joint Standing and Joint Select Committees shall have authority when the Legislature is adjourned to carry out their delegated duties. 3 M.R.S.A. §165. It further provided that the Legislative Council shall have the authority "to convene meetings of . . . joint standing and joint select committees and exercise supervision over them." 3 M.R.S.A. §162(3). This power would plainly include the power to convene a committee meeting for the purpose of choosing the committee's chairman. Thus if the Legislature is not in session the Legislative Council should convene the committees for the purpose of selecting the chairmen.

When the Legislature is in session the practice of convening a committee and choosing its chairman is controlled by rules of parliamentary procedure. In general, these rules provide that the chairman is the person responsible for calling the organizational and all subsequent meetings of the committee. P. Mason, *Manual of Legislative Procedure* 436 (1962); Reed's *Parliamentary Rules* 60 (1894); Robert's *Rules of Order* 415 (rev. ed. 1970). A chairman can be selected in a number of different ways. If the chair or presiding officer of a deliberative assembly is responsible for appointing the committee members, in the absence of legislation to the contrary, he has the duty to select its chairman which he does by naming that person to the committee first. Robert's *Rules*, *supra* at 147. Thus, if members of a Joint Select Committee of the Legislature were appointed by the President of the Senate and Speaker of the House, they, as presiding officers would select as chairmen the first-named members they appointed to the committee. This general rule of parliamentary procedure is consistent with the Legislative Rules which provide that the first-named Senate and House members of a Joint Standing Committee shall serve as its chairmen. Senate and House Registers 134-35 (1979).

A committee could be chosen by someone other than the presiding officer. The Legislature, for instance, could establish a committee and provide that it shall consist of certain designated state officials or their designees. See Hazardous Materials Advisory Board, 25 M.R.S.A. §2108. In such circumstances, the Legislature could provide that a particular state official be chairman, *Id.*, or it could delegate that duty to the committee itself. Robert's *Rules*, *supra* at 147-48. If the committee is to elect the chairman, then the first-named member has the responsibility of calling the committee together and acting as temporary chairman until the committee elects a permanent one. Mason's *Manual*, *supra* at 435; Robert's *Rules*, *supra* at 147.

Where the committee is to elect the chairman but the members are appointed by numerous appointing authorities, there would in reality be no first-named member to serve as temporary chairman. Although the parliamentary law commentators do not directly address this problem, they provide guidance by stating if a chairman refuses to call a meeting any two members may convene the committee, Mason's *Manual*, *supra* at 447; Robert's *Rules*, *supra* at 415. For practical purposes a recalcitrant chairman is similar to a committee operating without a chairman. If, therefore, the presence of numerous appointing authorities prevents the designation of a temporary chairman, the general rules of parliamentary procedure appear to dictate that the organizational meeting be called by any two members of the committee.

The Honorable John L. Martin

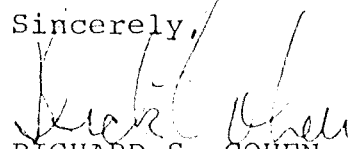
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In establishing the Joint Select Committee on Decommissioning of Nuclear Generating Facilities, the Legislature was silent on how the chairman should be selected. Because the members are not selected by a presiding officer but by many different appointing authorities the committee has the responsibility of choosing the chairman itself. Accordingly, the Committee should be convened by any two of its members for that purpose. All of the members of the Maine-Canadian Legislative Advisory Commission are appointed by the President of the Senate and Speaker of the House. In establishing the Commission, the Legislature provided that the "[C]ommission shall designate one of its members as chairman." 3 M.R.S.A. § 227. If the chairman has already been designated, he should convene the committee. If the chairman has not been elected, the first-named Senate and House members should convene the Commission. Of course, if the Legislature is not in session, the Legislative Council is responsible for convening these bodies and for supervising the election of their chairmen.

Please excuse my delay in responding to these questions. Feel free to call on me if I can be of any further service.

Sincerely,



RICHARD S. COHEN
Attorney General

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