

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)

RICHARD S. COHEN
ATTORNEY GENERAL



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

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

February 14, 1980

The Honorable William J. Garsoe
House Minority Leader
State of Maine
House of Representatives
State House
Augusta, Maine 04333

Dear Mr. Garsoe:

Pursuant to 5 M.R.S.A. § 195 we are pleased to respond to your written inquiry dated February 5, 1980. In your letter you ask whether it would be constitutional for the Legislature to establish, either by statute or by rule, reasonable deadlines for the filing of legislative proposals by the Executive and Judicial branches of the State. We conclude, as explained hereinafter, that it would not be unconstitutional for the Legislature to establish such deadlines either by statute or by rule.

In approaching this question, we start with the rubric that while the powers of the Legislature are absolute, except as limited by the Constitution, the Executive and Judicial branches are free to exercise only those powers that are expressly conferred by the Constitution or necessarily implied therefrom. Sawyer v. Gilmore, 109 Me. 169, 83 A. 673 (1912).

The Legislature is that department of our State empowered to make the laws. Me. Const., art. IV, pt. 1, § 1; art. IV, pt. 3, § 1; State v. Butler, 105 Me. 91, 73A. 560 (1909). To assist the Legislature in this duty, Me. Const., art. IV, pt. 3, § 4 grants to the Legislature the authority to determine its own rules of procedure. It, therefore, has the unfettered power to control its own procedure except as limited by other constitutional provisions. Opinion of the Attorney General, April 3, 1979 (79-63); P. Mason, Manual of Legislative Procedure 31 (1961). Establishing reasonable deadlines for the submission of legislation is manifestly a rule of procedure. See Sibbach v. Wilson & Co., 312 U.S. 1 (1940). The question thus arises whether the express

or implied authority of the Judicial or Executive branches requires the Legislature to consider proposed legislation by either the Governor or Judiciary whenever either branch recommends it. We answer this question in the negative.

The Judicial branch is vested with the judicial power of this State. Me. Const., art. IV, § 1. Although it is not possible to precisely define the term "judicial power," it includes the authority to interpret the laws and to declare the legal rights of parties properly before it. Moulton v. Scully, 111 Me. 428, 80 A. 944 (1914); State v. LeClair, 86 Me. 522, 30 A. 7 (1894). No constitutional provision grants to the Judicial branch the power to recommend legislation at any time it desires, nor is such authority necessary to properly effectuate the judicial power. Accordingly, we conclude that the Legislature may impose deadlines on when the Judicial Department may recommend legislation.

The Governor is the chief executive officer of the State. Me. Const., art. V, pt. 1, § 1. As such he is charged with faithfully executing the laws. Me. Const., art. V, pt. 1, § 12. His lawmaking function is confined to two Constitutional provisions, neither of which requires the Legislature to consider legislation recommended by the Governor whenever he so desires.

The first is found in Me. Const., art. IV, pt. 3, § 1 where it states that "the business of the second regular session of the Legislature shall be limited to . . . legislation in the Governor's call . . ." We recently construed this provision to be a limitation and not an obligation on what the Legislature could consider during the second regular session. Opinion of the Attorney General, April 3, 1979 (79-63).

The other salient provision is Me. Const., art. V, pt. 1, § 9 which provides:

[The Governor] shall from time to time give the Legislature information of the condition of the State, and recommend to their consideration such measures, as he may judge expedient.

In discussing a virtually identical provision in the Federal Constitution, U.S. Const., art. II, § 3, the United States Supreme Court stated that it does not empower the President to become a lawmaker; it limits his lawmaking function "to the recommending of laws he thinks wise . . ." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1951). We construe Me. Const., art. V, pt. 1, § 9 in a similar fashion. This provision is therefore simply a limitation on the Governor's lawmaking function; it does not impose any obligation on the part of the Legislature. As we recently stated, the plain meaning of the language "imposes [no] duty on the Legislature to consider bills submitted by the Governor." Opinion of the Attorney General, April 3, 1979 (79-63).

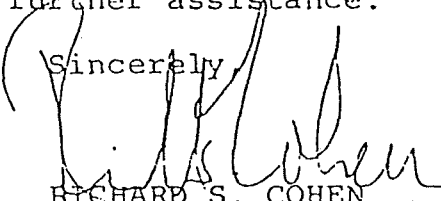
The Honorable William J. Garsoe
February 14, 1980
Page 3

Since neither Me. Const., art. IV, pt. 3, §1 nor art. V, pt. 1, §9 obligates the Legislature to consider legislation recommended by the Governor, the Legislature may constitutionally impose deadlines on when the Governor shall submit his proposed legislation if he wishes it considered by the Legislature at all. This conclusion falls well within the controlling principles enunciated in Opinion of the Attorney General, April 3, 1979 (79-63). We there decided that, consistent with Me. Const., art. IV, pt. 3, §1 and art. V, pt. 1, §9, the Legislature could enact a rule which would preclude the resubmission of any bill which had previously been introduced at any time during the preceding year. If the Legislature could prohibit the Governor from reintroducing legislation, it can impose the lesser restriction of requiring him to submit his proposed legislation by a certain date.

In sum, we have concluded that the Legislature may impose deadlines for the filing of proposed legislation by either the Executive or Judicial branches. It may impose these deadlines by either statute or rule. I would be pleased to discuss with you the relative merits of enacting a statute or adopting a rule to achieve this end.

For your information I am enclosing a copy of the Opinion of the Attorney General, April 3, 1979 (79-63). Please contact my office if we can be of any further assistance.

Sincerely,



RICHARD S. COHEN
ATTORNEY GENERAL

RSC/vv

Enclosure