

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 22, 1980

David Silsby, Director
Legislative Research
State House
Augusta, Maine 04333

Dear Mr. Silsby:

You have requested an opinion from this office on the question of whether the Legislature may amend an already existing statute which has not yet gone into effect because of the operation of Me. Const., art. IV, pt. 3, § 16, so as to make the previously enacted statute effective immediately. The specific problem is posed by two proposed bills, "AN ACT Relating to the Effective Date of Administrative Changes in the Employment Security Law," and "AN ACT to Clarify the Law Concerning Abuse between Family or Household Members," both of which have the purpose of amending previously enacted non-emergency laws so as to render them immediately effective. As might be inferred from its title, the former proposed bill has the sole purpose of rendering P.L. 1979, c. 579 immediately effective on its passage. The latter proposes, in addition to the change in effective date, substantive amendments to P.L. 1979, c. 578.

The issue raised by your question is one which has not been addressed by the Law Court. Similarly, the legislative debate preceding the adoption of art. IV, pt. 3, § 16 provides no guidance on the specific problem. Against this backdrop, no response can be entirely free from doubt. Nevertheless, we are of the opinion that the method proposed to convert the two existing, but not yet effective, acts into emergency measures does not comply with the requirements of the Constitution.

Art. IV, pt. 3, § 16 of the Maine Constitution reads as follows:

Section 16. No Act or joint resolution of the Legislature, except such order or resolutions as pertain solely to facilitating the performance of the business of the Legislature, of either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law, shall take effect until ninety days after the recess of the session of the Legislature in which it passed, unless in case of emergency, which with the facts constituting the emergency shall be expressed in the preamble of the Act, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct. An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include (1) an infringement of the right of home rule for municipalities, (2) a franchise or a license to a corporation or an individual to extend longer than one year, or (3) provision for the sale or purchase or renting for more than five years of real estate. (Emphasis added.)

The language of § 16 is unequivocal. For an act to become effective as an emergency, the Legislature must recite the facts constituting the emergency in the preamble of the act itself. Where the framers of the Constitution have prescribed a single, specific procedure for the enactment of emergency legislation, we believe it would exceed the permissible bounds of constitutional interpretation to conclude that some alternative procedure, not expressly authorized by the Constitution, would nonetheless suffice.

It is a fundamental principle of construction that, whenever possible, the intent of the Legislature should be determined from the plain meaning of the words in the statutory or constitutional provision being interpreted. State v. Hussey, Me., 381 A.2d 665 (1978). This is particularly true in the absence of any legislative intent to the contrary. In re Belgrade Shores, Me., 371 A.2d 413 (1977). Guided by this principle, we conclude that an act may not become effective as an emergency measure unless the act itself contains an emergency preamble which satisfies the requirements of art. IV, pt. 3, § 16 of the Maine Constitution.

We recognize that an argument can be made that our conclusion elevates form over substance. See 2D Sands, Sutherland Statutory Construction, § 33.03 at 7 (1973). The thrust of such an argument would be that since, under the proposed method, the amendatory legislation rendering the prior measure effective immediately would contain an emergency declaration, the spirit of the constitutional requirement has been satisfied. Though tempting as a matter of logic, this argument does not square with the language of § 16. In our view, acceptance of the argument is tantamount to rewriting, rather than interpreting, the constitutional provision.

Our disinclination to take liberties with art. IV, pt. 3, § 16 stems in part from the underlying purpose of that section. As we indicated in a prior opinion, the 90-day effective date requirement was established to preserve the right of the people to stay and possibly reverse an act of their Legislature through the referendum process. See Op. Atty. Gen. 79-170 (September 21, 1979). Since the people have expressly reserved this power to themselves,^{1/} we believe any procedure which extinguishes it should be narrowly construed. It is consistent with preserving the power of the people to require strict adherence to the letter of art. IV, pt. 3, § 16.

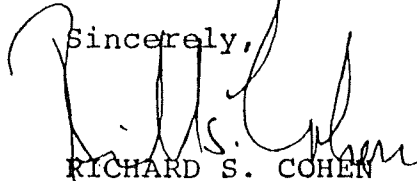
1/ Art. IV, pt. 1, § 1 of the Maine Constitution provides in relevant portion:

". . . the people reserve to themselves power. . . at their own option to approve or reject at the polls any Act, bill, resolve or resolution passed by the joint action of both branches of the Legislature. . . ."

In closing, we would note that the objectives which the Legislature is seeking to attain through the two bills under scrutiny here can easily be realized through a clearly constitutional procedure. The Legislature can simply repeal the previously enacted measures and reenact them with valid emergency preambles by a vote of two-thirds of all the members elected to each House. By following that procedure, the Legislature would eliminate any questions as to the constitutionality of the effective dates.^{2/}

I hope this information is helpful. Please feel free to call on me if I can be of any further service.

Sincerely,


RICHARD S. COHEN
Attorney General

RSC/ec

^{2/} As a matter of policy, it would seem that where two procedures exist, one of which is expressly authorized by the Constitution and the other of which is constitutionally suspect, the former ought to be utilized. That is particularly true here with respect to the legislation dealing with abuse between family or household members, insofar as that legislation establishes new crimes under the laws of Maine. To create the possibility that an individual might be prosecuted under a law not validly in effect would appear unjustifiable when the Legislature has at its disposal an alternative procedure which would completely obviate the problem.