

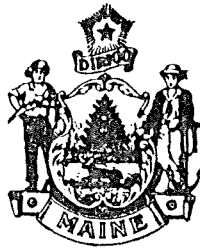
MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

February 18, 1981

Honorable Merle Nelson
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Nelson:

This will respond to your letter of February 6, 1981, in which you ask whether "the appointed finance committee of the Cumberland County Charter Commission [is] constitutional." Our inquiries into this matter reveal that the Charter Commission has not yet formulated a specific proposal regarding the structure of county government in that county. Since 30 M.R.S.A. c. 11 affords charter commissions considerable latitude, we believe it would be preferable to await such a proposal before any legal judgments are rendered.

While an answer to your specific question would be premature, it might be useful for us to offer some general observations about the concern which apparently prompted your inquiry. It has been suggested that because the county finance committee is an appointed body, its power under 30 M.R.S.A. § 1604 to approve the county budget gives rise to a violation of article 4, section 4 of the United States Constitution, which provides that "[t]he United States shall guarantee to every State in the Union a Republican form of Government. . . ." Although an intriguing proposition, we seriously doubt that a court would find a violation of article 4, section 4. The principal, although not exclusive, basis for our doubt lies in the conclusion of various courts that the constitutional provision simply does not apply to local government. See, e.g., Eckerson v. City of Des Moines, 115 N.W. 177 (Iowa 1908). As stated by the Supreme Court of Louisiana

. . . [I]t is settled jurisprudence that the guarantee in the Federal Constitution to the states of a Republican form of government does not extend to the system of local government for the municipalities, counties and parishes of a state.

State v. Smith, 166 So. 72, 82 (La. 1936) (emphasis added). In short, we believe the concern over article 4, section 4 is misplaced.

I hope this information is helpful.

Sincerely,

Stephen L. Diamond

STEPHEN L. DIAMOND
Deputy Attorney General

SLD/ec