

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

June 19, 1981

Honorable Michael Carpenter
Maine Senate
State House
Augusta, Maine 04333

Dear Senator Carpenter:

This will respond to two questions you have raised concerning the Legislature's power under existing Maine statutes to act on measures which are still pending before the Legislature as of midnight of this date. Given your need for immediate advice, our answers will be summary in nature.

Your first question is essentially whether the Legislature may act on bills which are still pending as of midnight. By way of background, the first regular session of the 110th Legislature has exhausted the 100 legislative days authorized by 3 M.R.S.A. § 2. Furthermore, today is the final day of the second of the two extensions permitted by that section. Since today is thus the last day on which, under existing Maine statutory law, the Legislature may act on measures pending before it,^{1/} the answer to your question hinges on when the legislative day ends.

The length of a legislative day was considered in two prior opinions of this Office. The thrust of those opinions is that a legislative day terminates at midnight, but that there is

^{1/} This conclusion does not necessarily apply to measures returned by the Governor, since the Legislature has not yet utilized its "veto day." This is discussed in more detail in connection with your second question.

authority for the proposition that it is for the Legislature to determine when that moment occurs. To expedite matters, I am enclosing our prior opinions with the understanding that if clarification is necessary, you will contact us.

Your second question is when, and by what majority, the Legislature may schedule a "veto day." In this context, we would note that the Legislature has not yet utilized the "one additional legislative day" authorized for this purpose by 3 M.R.S.A. § 2.

Section 2 of Title 3 provides in relevant part as follows:

"The times for adjournment for the first and 2nd regular sessions may also be extended for one additional legislative day for the purpose of considering possible objections of the Governor to any bill or resolution presented to him by the Legislature under the Constitution, Article IV, Part Third, Section 2."

Since the authority to schedule a "veto day" is expressed as an extension of the time for adjournment, it is our view that the vote on such an extension may be taken any time before final adjournment.

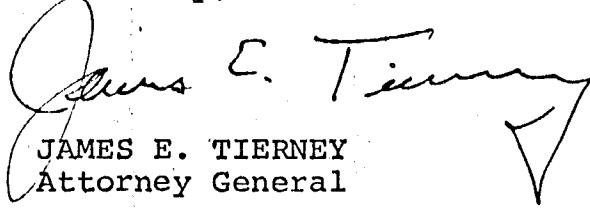
Finally, it is our opinion that only a simple majority of each House is necessary to schedule a veto day. While 3 M.R.S.A. § 2 expressly requires a vote of 2/3 of the members of each House present and voting for an extension, it is silent on the vote needed for a veto day. Thus, we believe that it was the intent of the Legislature to follow the general rule that a simple majority suffices unless otherwise expressly provided.

"The power which establishes a public body can require the vote of more than a majority to take certain actions, but unless more is clearly required a majority can take any action which the body has the power to take." Mason's Manual of Legislative Procedure, § 50, ¶ 2 (1970 ed.)

Furthermore, we are informed that the above conclusion is consistent with the past practice of the Maine Legislature with respect to the scheduling of veto days.

I hope this information is helpful.

Sincerely,

A handwritten signature in cursive script that reads "James E. Tierney". The signature is written in dark ink and is positioned above the typed name.

JAMES E. TIERNEY
Attorney General

JET/ec

Legislative Day

3 M.R.S.A. 2

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

July 25, 1977

Honorable Louis Jalbert
House of Representatives
State House
Augusta, Maine

Dear Representative Jalbert:

This responds to your request for advice on the amount of time which the Legislature may spend considering gubernatorial veto messages.

The meeting of the Legislature for today is for the purposes of considering gubernatorial vetoes. This meeting is held pursuant to the limits on legislative sessions established by 3 M.R.S.A. § 2 and specifically the last sentence of the second paragraph of that section which permits the Legislature to extend its adjournment date for "one additional legislative day" for the purpose of considering gubernatorial vetoes. Specifically, you have raised the question as to whether the term "legislative day" should be construed to extend for either 24 hours or an indefinite time from the time the Legislature meets, or whether the legislative day terminates at midnight.

There is a general principle of law that where a statute uses the term "day" without further modification indicating a different meaning as to time, the term "day" means a period from midnight to midnight. J.B.H. v. State, 228 S.E.2d 189 (Ga., 1976); Dinkler v. Jenkins, 163 S.E.2d 443 (Ga., 1968); Walinski v. Mayor and Council of City of Gloucester, 95 A.2d 625 (N.J., 1953).

A legislative day has been construed to be those calendar days on which Houses of the Legislature meet, see opinion to the Honorable James E. Tierney of December 27, 1976. See also, Haindel v. Henry, 313 So.2d 577, 579 (La., 1975). Beyond this

Louis Jalbert
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point we have not been able to find the meaning of legislative days to be construed other than the midnight-to-midnight period during which Houses of the Legislature meet. However, we would note that our research of legislative precedence in Maine and elsewhere has necessarily been limited by the necessity of providing this opinion on relatively short notice.

Thus, we construe the authorization in 3 M.R.S.A. § 2 relating to consideration of vetoes to permit a meeting of the Legislature for one day terminating at midnight.

We must note, however, that while there may be some risk in extending a one-day session beyond midnight, Legislatures have traditionally been accorded some flexibility in determining the moment at which midnight is reached; thus Mason's Manual of Legislative Procedure (1970 ed.) notes:

"It is a matter of common knowledge that legislatures almost universally do continue their sessions beyond the time fixed for their adjournment, and for the sake of regularity and form often stop the clock before the hour has arrived for adjournment so that in form the adjournment actually takes place at the proper moment of time. A legislative body has the power and right to determine for itself when the moment of time has arrived for adjournment, and it has the power to make its journals conform to what it determines to be that moment of time." Mason's Manual of Legislative Procedure, § 782, ¶ 4.

cf. Earnest v. Sargent, 150 P. 1018 (N.M., 1915).

We are also enclosing for your consideration an opinion of July 15, 1977, to the Secretary of the Senate indicating that it may be possible, pursuant to 3 M.R.S.A. § 2, to provide an additional day or days to conduct legislative business. If these days were authorized by 2/3 vote, it would be possible to consider gubernatorial vetoes and any other legislative business within such authorized days.

I hope this information is helpful.

Very truly yours,

Joseph E. Brennan
JOSEPH E. BRENNAN
Attorney General

JEB/ec

Enclosure

cc: Legislative Leadership

3 MRSA § 2
Legislature Adjournment Deadline

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
March 23, 1978

Honorable John L. Martin
Speaker of the House

Dear Mr. Speaker:

This responds to your request for an opinion on the question of whether tomorrow (March 24, 1978) would be the 51st Legislative day so that any extension of Legislative activity beyond midnight March 23 will require a 2/3 vote to extend the date of adjournment (exclusive of "veto day") as required by 3 MRSA §2. We answer in the affirmative.

3 MRSA §2 requires that in the second regular session the legislature shall adjourn no later than 50 legislative days after convening. In developing this requirement, the legislature apparently intended that the day of convening would also count as a legislative day for purposes of adjournment deadline calculations. The legislative debates on adoption of the session limits in 3 MRSA §2 make it clear that 100 and 50 legislative day limits respectively were intended for the first and second sessions*

Thus extension of the date for adjournment beyond midnight, March 23 will require an extension vote as specified in §2

Sincerely,

Donald G. Alexander
Deputy Attorney General

*Legislative Record Senate, 1976 pp. 499, 544, 699, 1026
Legislative Record House, 1976 p. 637