

MAINE STATE LEGISLATURE

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ATTORNEY GENERAL



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

February 8, 1982

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

Dear Mr. Silsby:

You have asked that this Office render its opinion on the question of whether the Director of Legislative Research (hereinafter, Director) has the power, under Joint Legislative Rule 32, to change a section number in an initiated bill to conform to the system of numbering statutes used in the Maine Revised Statutes Annotated. This question has arisen as a result of the filing with the Secretary of State of an initiated bill entitled "AN ACT to Repeal the Control of Milk Prices at the Wholesale and Retail Levels," which uses §§ 2961 through 2971 of Title 7 of the Revised Statutes. These sections were authorized for use by the Secretary of State's Office, on the advice of the Office of Legislative Research, when it approved the form of petitions to be used to initiate the bill in October of 1980. The subsequent enactment of legislation, however, has created a problem with the use of the numbers. The question presented is whether these section numbers may be changed by the Director of Legislative Research under Joint Legislative Rule 32 without violating art. IV, pt. 3, § 18(2) of the Maine Constitution which prevents the Legislature from amending an initiated measure without submitting both the amended form and the original bill to the people as competing measures for approval or disapproval.

The Legislature has limited power to enact legislation, or in this case, to formulate rules, affecting the referendum and initiative process. It is generally stated that the Legislature may establish procedures implementing the referendum or initiative if such procedures do not impose any undue burden on the rights guaranteed by the constitution. Wolverine Golf Club v. Hare, 180 N.W.2d 820 (Mich. App. 1970). In that case, the Michigan court invalidated a statute requiring initiative petitions to be filed at least 10 days prior to the legislative session to which they are addressed. In the court's view, this requirement unreasonably interfered with the people's constitutional right to legislate through the initiative process.

Under the test set out in Wolverine Golf Club, we do not think that permitting the Director to adjust the section numbers of the initiated bill, prior to its submission to the Legislature, for the sole purpose of conforming those numbers to the comprehensive numbering scheme of the Maine Revised Statutes Annotated, infringes at all, let alone unduly, the people's right to initiate legislation. There is no parallel here with the Wolverine Golf Club case. In this case, a change of section numbers is purely cosmetic and technical and has no substantive impact whatsoever on the legislation.^{1/} Thus, we conclude that it would be appropriate for the Legislature to permit the Director, by legislation or by rule, to make technical, non-substantive changes in initiated legislation. Where such changes are made in an initiated bill prior to its submission by the Director to the Legislature, the "competing measure" clause of § 18 will not be invoked for that reason alone.

A second question arises from this conclusion: whether Joint Legislative Rule 32 can be interpreted to confer authority on the Director to make such changes.^{2/} We believe this question should

^{1/} Indeed, as we understand the process, the original petition may not even include section numbers before its review for form by the Secretary of State, and, if it does, they are often changed prior to circulation at the suggestion of the Office of Legislative Research.

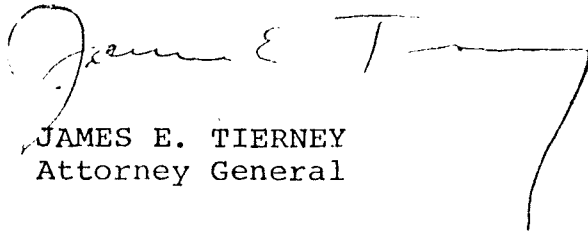
^{2/} Joint Rule 32 reads as follows:

"Form. All bills and resolves shall be corrected as to matters of form by the Director of Legislative Research before printing."

be answered by the Legislature, perhaps acting through the Legislative Council. The Joint Rules are formulated by the Legislature to govern its internal operations. They are applied by the Legislature, and we believe that they should also be interpreted by the Legislature. We merely conclude that the Legislature has the constitutional power to vest in the Director the authority to make changes in initiated bills which are purely cosmetic and which do not affect the substance of the bill. Whether Joint Rule 32 actually confers this authority should be determined by the Legislature.

We hope this answers your question. If you have any further problems, please feel free to contact this Office.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec

cc: Legislative Council