

MAINE STATE LEGISLATURE

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May 18, 1982

Honorable Samuel W. Collins, Jr.
31 Samoset Road
Rockland, Maine 04841

Dear Senator Collins:

This will respond to your inquiry of April 13, 1982, in which you requested an opinion about the timing of the various procedures which relate to the redistricting of the Maine Legislature and the state's districts for the United States House of Representatives. The issue presented is whether the 111th Legislature must establish a commission to develop such a reapportionment plan within the first three calendar days after the Legislature initially convenes in December, 1982, or whether the Legislature can establish such a commission within the first three calendar days after it reconvenes in January, 1983. For the reasons set out below, it is our opinion that the 111th Legislature must establish a reapportionment commission within three days after the Legislature convenes in December, 1982.

The Maine Constitution establishes the timetable for reapportionment.

A legislature which is required to apportion the districts of the House of Representatives or the Senate, or both under Article IV, Part First, Section 2, or Article IV, Part Second, Section 2, shall establish, within the first three calendar days after the convening of that legislature, a commission to develop in accordance with the requirements of this Constitution, a plan for apportioning the House of Representatives, the Senate, or both.

ME. CONST., art. IV, pt. 3, § 1-A (Supp. 1981). The Constitution further provides that "[t]he Legislature shall convene on the first Wednesday of December following the general election in what shall be designated the first regular session of the Legislature. . . ." ME. CONST., art. IV, pt. 3 § 1 (Supp. 1981). "In construing a statute, and the same principle holds true, in respect to the Constitution, we look primarily to the language used which may be illumined in cases of doubt by the surrounding circumstances." *Farris v. Goss*, 143 Me. 227, 230, 60 A.2d 908, 910 (1948) (citations omitted). Therefore, since the Legislature that convenes in December, 1982 is required to reapportion the Maine House of Representatives and the Maine Senate and to redistrict the Congressional districts, it must establish the reapportionment commission to create the plan within three calendar days after the Legislature convenes in December, 1982.

The only problem raised by this conclusion concerns its apparent inconsistency with the provision of the Maine Constitution which designates the 111th Legislature as the one to make the required reapportionments. Those provisions state that "[t]he Legislature which convenes in 1983 and every tenth year thereafter shall cause the State to be divided into districts for the choice of one Representative for each district," ME. CONST., art. IV, pt. 1, § 2 (Supp. 1981), and that "[t]he Legislature which shall convene in 1983 and every tenth year thereafter shall cause the State to be divided into districts for the choice of a Senator from each district, is in the same method as provided in Article IV, Part First, Section 2 for apportionment of Representative districts." ME. CONST., art. IV, pt. 2, §2 (Supp. 1981). Because these provisions refer to the Legislature "which shall convene in 1983," one interpretation of these provisions could be that they alter the timetable for the creation of the commission to reapportion the House and Senate, and require the Legislature to establish the reapportionment commission when it convenes in 1983 and not when it convenes in December, 1982. US 11/19

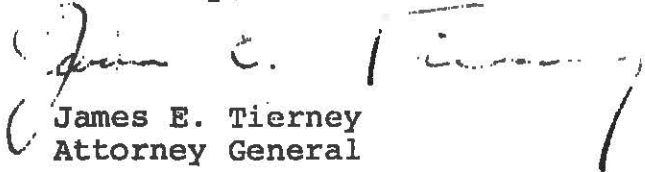
We conclude that that interpretation is incorrect and would render the explicit provision of the Maine Constitution regarding reapportionment superfluous. We begin with the assumption that "it may not be presumed that any clause in the Constitution was intended to be without effect." *Grossman v. Gilchrist*, 519 F. Supp. 173, 176 (N.D. Ill. 1981) (interpreting the U.S. Constitution). As indicated above, the clear language of Article IV, Part 3, Sections 1-A, requires the Legislature to establish the reapportionment commission within the first three days after the convening of that Legislature, and Article IV, Part 3, Section 1 requires that convening to occur, for the 111th Legislature, in December, 1982. To read the provisions of

Article IV, Part 1, Sections 2 and Part 2, Section 2 which refer to the "Legislature which shall convene in 1983" as altering these other provisions would be to render them devoid of any memory. A more reasonable interpretation, therefore, of the words "Legislature which shall convene in 1983" would be to treat the phrase as words of description and not as words of limitation. Those references are better interpreted as describing which Legislature shall accomplish the apportionment rather than when that Legislature must accomplish its task.

In conclusion, therefore, although the Legislature which meets in 1983 must reapportion the House of Representatives and the Senate and redistrict the Congressional districts, it is required to begin that task in December, 1982. This analysis applies with equal force to the requirement that the Congressional districts be redistricted in 1983. See 21 M.R.S.A. § 1571-A(2) (Supp. 1981).

I hope this answers your questions.

Sincerely,


James E. Tierney
Attorney General

JET/kc

cc: Legislative Council