

# MAINE STATE LEGISLATURE

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March 23, 1983

Honorable Nancy Clark  
Senate Chambers  
State House  
Augusta, ME 04333

Dear Senator Clark:

You have requested an opinion on the question of whether the Legislature has an option, under Maine Constitution, Art. X, § 4, to have constitutional amendments voted on in November of the year of passage or in November of the following year. We conclude that such an option exists in the first regular session of the Legislature but that constitutional amendments proposed during the second regular session must be voted on at the general election following that session.

Section 4 of Article X of the Maine Constitution provides as follows:

The Legislature, whenever two-thirds of both Houses shall deem it necessary, may propose amendments to this Constitution; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, in the manner prescribed by law, at the next biennial meetings in the month of November, or to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives, on the

Tuesday following the first Monday of November following the passage of said resolve, to give in their votes on the question, whether such amendment shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this Constitution.

While this language may be read to establish alternative dates for amendment elections, it can also reasonably be interpreted to require that those elections be held in the November immediately following passage of the proposed amendment. Under this latter interpretation, the phrase "on the Tuesday following the first Monday of November following the passage of said resolve . . ." must be read as applying to the entire section and not just to the phrase "to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives . . . ."

The ambiguity in the language of section 4 is resolved by analyzing its history. A part of the original Maine Constitution, section 4 has been amended three times in ways that are relevant to the proposed question.<sup>1/</sup> The original language of the section required the amendment election to be held

in the manner prescribed by law, at their next annual meetings in the month of September . . . .

1821 Me. Const., Art. X, § 4.

Since statewide elections and legislative sessions were held annually at that time, see 1821 Me. Const., Art. IV, pt. 1, § 2; Art. IV, pt. 2, § 1; Art. IV, pt. 3, § 1; Art. V., pt. 1, § 2, constitutional amendments were also voted on annually.

In 1879, a system of biennial elections was adopted, and section 4, together with several other sections, was amended to comply with this change by substituting the word "biennial" for "annual." 1879 Resolves, c. 151. The effect of this amendment was to require that constitutional amendment elections be held only at the biennial general elections.

In 1907, in an apparent effort to address this situation, section 4 was further amended by deleting the language "in the

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<sup>1/</sup> There is no reported debate in the Legislative Record on any of the relevant changes in section 4.

manner provided by law, at their next biennial meetings in the month of September" and by adding the language

to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives on the second Monday in September following the passage of said resolve.

1907 Resolves, c. 238  
[emphasis added].

The intent of this provision, in light of the earlier change to bring the section into line with the new system of biennial elections, was again to establish a mechanism for holding amendment referenda in the same year as the passage of the resolve. Given a single biennial legislative session held in the odd-numbered year, as was the practice of that time, the 1879 amendment had created a situation in which constitutional amendments proposed during the odd-year session would not be voted on until the even year, more than a year after being adopted by the Legislature. The 1907 amendment remedied this problem by requiring special elections on constitutional amendments to be held in September of the year of their passage.

Section 4 was again amended in 1913, bringing it substantially to its current form.<sup>2/</sup> Chapter 354 of the 1913 Resolves added the underscored language:

in the manner prescribed by law at the next biennial meetings in the month of September  
or to meet in the manner prescribed by law  
for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives on the second Monday in September following the passage of said resolve to give in their votes on the question, whether such amendments shall be made . . . .

Me. Const., Art. X, § 4,  
as amended by 1913 Resolves,  
c. 354.

The effect of this amendment was to restore the original

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<sup>2/</sup> A 1957 amendment changed the date of the election from September to November. 1957 Resolves, c. 94

language which required amendment referenda to be held at regular elections, while also retaining the option to have such elections held specially in the off-year. The inclusion of the word "or" lends strong support to the conclusion that the Legislature, in drafting chapter 354, intended to create alternative dates for amendment referenda. The most telling part of the legislative history in support of of this conclusion, however, is that the phrase "on the second Monday in September following the passage of said resolve" was part of the 1907 amendment. It thus appears to suggest only that amendment referenda may be held at special elections and not that they must always be held in the November following the legislative session at which the amendment is proposed. Taken together with the addition of the word "or," the history of this phrase supports the proposition that the drafters of the 1913 amendment to section 4 intended to give the Legislature the option to allow a constitutional amendment to be voted on at the next general election or at a special election, in the November following the close of the session.<sup>3/</sup>

The conclusion reached in this opinion is supported by historical practice. On a number of occasions since 1913, the Legislature has chosen to have a proposed constitutional amendment voted on not at a special election following the close of the legislative session but at the next general election. For example, at its session of 1919, the Legislature proposed six amendments to the Constitution which were eventually approved. Exercising the option provided for in section 4, the Legislature specified that five of these amendments were to be voted on at a special election in September of 1919. 1919 Resolves, c. 24; c. 108; c. 110; c. 155; c. 168. The remaining amendment was voted on at the next general election in 1920. 1919 Resolves, c. 22.<sup>4/</sup>

The Justices of the Supreme Judicial Court in Opinion of the Justices, 157 Me. 525 (1961) appeared to interpret section 4

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<sup>3/</sup> Under this interpretation, and given the current system of annual legislative sessions, a constitutional amendment proposed at a second regular session could not be "held over" for an off-year election but must be voted on at the general election in the November following its passage.

<sup>4/</sup> On certain occasions, the Legislature has included language in a constitutional resolve which permits it to be voted upon at the next general or special statewide election. See, e.g., 1977 Constitutional Resolutions, c. 1; c. 2; c. 3; c. 4; c. 5; 1937 Resolves, c. 4. We offer no opinion on the propriety of this practice.

as providing for alternative dates for amendment referenda. Concluding that votes on constitutional amendments taken at a special election in October, 1961 were invalid, the Justices stated that

a precise day and calendar month for voting by either alternative are positively appointed and denoted by [Art. X, § 4] of the Constitution. . . .

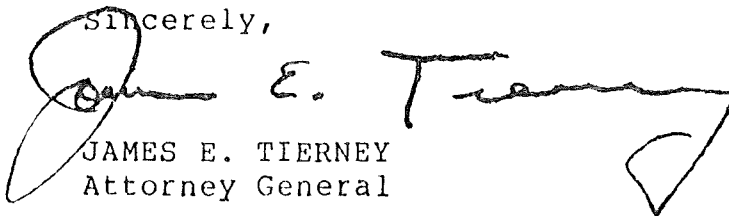
157 Me. at 529.

Later in the Opinion, in responding to the question of whether the amendments could be voted on at the next biennial meetings in 1962, the November date for amendment referenda in 1961 having already passed, the Justices said that such a vote "will conform to the express requirement of the Constitution. . . ." Id. at 531.<sup>5/</sup>

In light of the history of Art. X, section 4 of the Maine Constitution, the historical practice under it and the relevant judicial authority, we conclude that it establishes alternative dates for referenda on proposed amendments to the Constitution. The Legislature meeting in first regular session (odd-numbered years) may either send a proposed amendment out for approval at a special election in November of the year of the session or present it to the people at the general election in the following year. No such alternative is available in the second regular session (even-numbered year) since a general election would immediately follow that session and special elections under section 4 may only occur in the November "following the passage of said resolve".

We hope this information is useful. Please do not hesitate to call on this office if we can be of further service.

Sincerely,



JAMES E. TIERNEY  
Attorney General

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<sup>5/</sup> Opinions of this office are also in accord with the conclusion reached herein. See Opinion of the Attorney General, July 25, 1978; Opinion of the Attorney General, July 22, 1977.