

# MAINE STATE LEGISLATURE

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ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333  
March 25, 1983

Honorable Darryl Brown  
House of Representatives  
State House Station #2  
Augusta, Maine 04333

Dear Representative Brown:

This will respond to your letter of March 10, 1983, in which you seek this Department's opinion as to whether the Apportionment Commission of the 111th Legislature acted beyond its constitutional authority in making corrections to its reapportionment plan for the House of Representatives subsequent to March 1, 1983. For the reasons which follow, this Department believes the Commission did not act unconstitutionally or otherwise illegally.

The facts as you describe them are as follows. The 111th Legislature convened on December 1, 1983. Shortly thereafter, the Legislature established an Apportionment Commission "to develop in accordance with the requirements of this Constitution, a plan for apportioning the House of Representatives, the Senate, or both." Maine Constitution, Art. IV, pt. 3, § 1-A. The applicable constitutional provisions require the Commission to submit its plans to the Clerk of the House and the Secretary of the Senate "no later than ninety calendar days after the convening of the Legislature," i.e., March 1, 1983. See Maine Constitution, Art. IV, pt. 1, § 3 and Art. IV, pt. 2, § 2. The Commission held public hearings on February 22, 1983 and March 1, 1983, and on the latter date submitted plans for the reapportionment

of the Senate, the House of Representatives and Maine's two Congressional Districts.<sup>1/</sup>

Within a week after March 1, 1983, however, the Commission realized that due to technical difficulties in working with census data, its plan for the reapportionment of the House of Representatives did not accurately reflect the Commission's intent. Consequently, the Commission met and prepared a revised plan and map for the reapportionment of Maine's 151 Representative Districts. This material was then submitted to the Clerk of the House.

Based upon the foregoing facts, you have asked whether the Commission exceeded its authority by revising its plan after March 1, 1983, i.e., beyond the ninetieth calendar day after the convening of the Legislature. You have also asked whether the Commission acted improperly by not conducting a public hearing at or giving public notice of the meeting at which it revised its original apportionment plan.

Article IV, pt. 1, § 3 requires the Apportionment Commission to submit its plan not later than ninety calendar days after the convening of the Legislature. The Commission complied with this constitutional requirement by submitting its plan on March 1, 1983. Nothing in Article IV, pt. 1, § 3 or in any other provision of the Maine Constitution forbids the Commission (or anyone else) from suggesting revisions to that plan to the Legislature. Ultimately, it is the Legislature which must either enact the Commission's plan or a plan of its own. There is no constitutional prohibition to its receiving information from any source in discharging this obligation. Thus, the Commission's action in informing the Legislature of its error after March 1, 1983, is not unconstitutional.

Similarly, the Commission did not act improperly when it met to consider what action to take with regard to its error. The requirement as to public hearings is set forth in Article IV, pt. 3, § 1-A of the Maine Constitution. The Commission discharged this responsibility by holding public hearings on February 22 and March 1, 1983. There is no requirement that every Commission meeting be a "public hearing," although it is our understanding that all meetings of the Commission, including the one at which it revised its plan, were open to

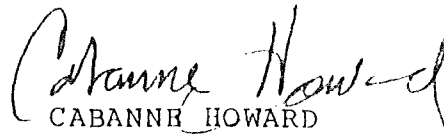
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<sup>1/</sup> While the apportionment of Representative and Senatorial Districts is governed by the Maine Constitution, the apportionment of Congressional Districts is governed by statute. See 21 M.R.S.A. § 1571-A.

the public. The requirement that public notice be given of a meeting of a governmental agency is contained in Section 406 of the Freedom of Access Law, 1 M.R.S.A. § 401, et seq., which requires that public notice of a meeting be given only if "the body or agency will deal with the expenditure of public funds or taxation, or will adopt policy at the meeting." Assuming that the Apportionment Commission is subject to the Freedom of Access Law, it does not appear that the Commission was dealing with the expenditure of public funds or taxation or the adoption of policy. Public notice of the meeting was therefore not required by 1 M.R.S.A. § 406.

We hope this information is helpful to you. Please feel free to call upon this Office if we can be of further assistance.

Sincerely,



CABANNE HOWARD  
Assistant Attorney General  
Chief, Opinions Division

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