

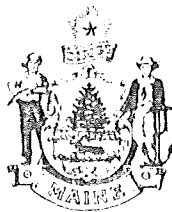
# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



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

March 28, 1983

Honorable Harriet B. Lewis  
House of Representatives  
State House Station #2  
Augusta, Maine 04333

Dear Representative Lewis:

This will respond to your letter of March 14, 1983, in which you seek this Department's opinion as to whether the reapportionment of the City of Auburn by the Legislature's Apportionment Commission complies with the requirements of Article IV, pt. 1, § 2 of the Maine Constitution. As more fully explained below, it is the opinion of this Department that the Commission's treatment of Auburn satisfies the criteria of the Constitution.

In order to place your question in perspective, it is necessary to examine the pertinent language of Article IV, pt. 1, § 2, which provides:

"Each Representative District shall be formed of contiguous and compact territory and shall cross political subdivision lines the least number of times necessary to establish as nearly as practicable equally populated districts. Whenever the population of a municipality entitles it to more than one district, all whole districts shall be drawn within municipal boundaries. Any population remainder within the municipality shall be included in a district drawn to cross the municipal boundary, provided that such population remainder of the municipality must be contiguous to another municipality or municipalities included in the district."  
(emphasis supplied)

Based upon the 1980 Federal Decennial Census, the Commission utilized the figure of 1,125,030 as the population of Maine. Since the Constitution provides for 151 Representative Districts, the Commission determined that 7,451 represented the average population figure for each District.<sup>1/</sup> The Commission also determined that the City of Auburn had a population of 23,100, thereby entitling it to three whole districts with a population remainder.

As required by the Constitution, the Commission drew the three whole districts (Districts 61, 62 and 63) within the municipal boundaries of the City of Auburn. In doing so, the Commission was left with two population remainders; one, with a population of 890, at the northwesterly end of the City, and one, with a population of 302, at the southeasterly end of the City. In other words, the two population remainders are located at either end of the three whole districts within the City of Auburn. The Commission placed the population remainder at the northwesterly end of Auburn in District 59, which includes Leeds, Livermore and Turner, the latter municipality being contiguous to that population remainder. Similarly, the Commission placed the population remainder at the southeasterly end of Auburn in District 70, which includes portions of Lisbon and Brunswick and all of Durham, the latter municipality being contiguous to that population remainder.

It is the Commission's placement of Auburn's population remainder in two separate districts which has prompted your inquiry. In particular, you have asked whether the Commission should have placed all of Auburn's population remainder in a single Representative District. The answer to your question lies in an interpretation of the last sentence of Article IV, pt. 1, § 2 which states that "[a]ny population remainder within the municipality shall be included in a district drawn to cross the municipal boundary, provided that such population remainder of the municipality must be contiguous to another municipality or municipalities included in the district."

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1/ Article IV, pt. 1, § 2 provides in relevant part:

"The 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. The number of Representatives shall be divided into the number of inhabitants of the State exclusive of foreigners not naturalized according to the latest Federal Decennial Census, or a State Census, previously ordered by the Legislature to coincide with the Federal Decennial Census, to determine a median population figure for each Representative District."

It must be acknowledged at the outset that the language quoted above is susceptible of two reasonable interpretations. For example, it is possible to construe this language to require all of a municipality's population remainder to be included in a single Representative District with a municipality which is contiguous to it. On the other hand, it is equally reasonable to conclude that this language of the Constitution was intended to insure that population remainders will be included in some district with a municipality which is contiguous to it. In other words, the purpose of the requirement relating to population remainders was not to mandate their inclusion in a single district but to preserve the contiguity of territory within a district. Following an examination of the legislative history of Article IV, pt. 1, § 2, and the purpose which the Legislature sought to effectuate by that constitutional provision, this Department is persuaded that the latter interpretation is the correct one.

The language of Article IV, pt. 1, § 2 in question was made part of Maine's Constitution by Article 126 of the Constitutional Amendments of 1975, which was adopted by the people in November of that year. It originated in the Legislature as Legislative Document 27, a "Resolution, Proposing Amendment to the Constitution to Provide Single Member Districts for the House of Representatives." As originally drafted, L.D. 27 provided, in relevant part, as follows:

"Whenever the population of a municipality entitled it to more than one district, the entire district shall be drawn within the municipal boundaries. The population remainder within the municipality may be included in the district drawn to cross the municipal boundary, provided that this portion of the municipality may not be separated from the other municipality or municipalities in the district by another district." (emphasis supplied)

L.D. 27 was eventually enacted by the Legislature and sent out for voter approval after being amended by House Amendment "A" (H.-54). The legislative record reveals a total absence of debate on that portion of L.D. 27 pertaining to population remainders. See 1975 Leg. Rec. at A-7, A-82, B-106, B-115, B-137, B-152, B-208, B-224, B-246.


In view of the language of L.D. 27 as originally drafted and as subsequently amended, it appears that the Legislature's primary objective in providing for the treatment of population remainders was not to require their inclusion in a single

district but to guarantee that they would be contiguous "to another municipality or municipalities" in the districts in which they were placed. The evil which the Legislature sought to avoid was not that portions of a population remainder would be separated from each other, but that they would be separated from the Representative Districts of which they formed a part. Moreover, had the Legislature intended that all portions of a population remainder be placed in a single district, it could easily have said so.

As described earlier, the Apportionment Commission placed the population remainders of the City of Auburn in two districts with other municipalities which are contiguous to them. Accordingly, the Commission complied with the mandate of Article IV, pt. 1, § 2.<sup>2/</sup>

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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<sup>2/</sup> This opinion should not be taken to suggest that Article IV, pt. 1, § 2 requires the separation of population remainders. Rather, it simply concludes that Article IV, pt. 1, § 2 does not mandate the inclusion of all portions of a population remainder in a single district.