

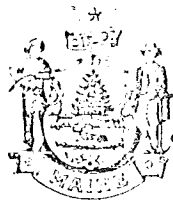
MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

January 31, 1984

Honorable John N. Diamond
House of Representatives
Majority Office
State House Station #2
Augusta, Maine 04333

Dear Representative Diamond:

This will respond to your letter of January 11, 1984, in which you ask a series of questions involving the reapportionment of county commissioner districts. In particular, your first question concerns the constitutionality of 30 M.R.S.A. § 105-V(3), as enacted by P.L. 1983, c. 518 (effective June 28, 1983), and your remaining three inquiries relate to the constitutionality of proposed legislation, which is designed to either phase-in or totally delay county reapportionment until 1986. For the reasons which follow, it is the Opinion of this Office that both the statute and the bill are constitutional.

- I. The County Commissioner Reapportionment law (P.L. 1983, c. 518) clearly contemplates that commissioners who were elected in 1982 for a 4-year term might have that term cut to 2 years in order to give effect to the reapportionment plan in the 1984 elections. In fact, the Reapportionment Commission recommended that this occur in 11 counties. Does the Legislature have the power to change the term of office of a county commissioner once that term has begun?

In response to your first inquiry, it is clear that the Legislature has the authority to alter the term of office of a county commissioner, notwithstanding the fact that the term of office has already commenced. The Supreme Judicial Court of Maine has ruled that where, as in the case of the office of county commissioner, a term of office is set by statute, "[t]he Legislature have the power to shorten the term of office of any officer, the tenure of whose office is not fixed by the constitution." Ross v. Hanson, 227 A.2d 606, 611 (Me. 1967) quoting Taft v. Adams, 69 Mass. (3 Gray) 126, 130 (1854). More recently, the Justices of the Supreme Judicial Court stated that as to offices the tenure of which is fixed by statute,

. . . it is 'undisputed' that '[o]nly the legislature can establish a public office (other than a constitutional office) as an instrumentality of government. Whether the creation of the office is necessary or expedient, its duties, its powers, its beginning, its duration, its tenure, are all questions for the legislature to determine and be responsible to the people for their correct determination. (emphasis added)

Opinion of the Justices, 343 A.2d 196, 203 (Me. 1975) quoting State v. Butler, 105 Me. 91, 96-97, 73 A. 560, 562-63 (1909).

II. The attached bill seeks to amend 30 M.R.S.A. § 105-V in order to allow the regularly scheduled 1984 elections to take place in the new districts, but to delay the full effect of reapportionment until 1986. Is this permissible?

As we understand the proposed legislation, which is entitled "AN ACT to Delay the Implementation of Reapportionment of County Commissioner Districts," it would provide that in those districts represented by a county commissioner whose term of office is scheduled to expire in 1984, the individual elected to fill that office will represent a county commissioner district, as apportioned. Those county commissioners whose terms of office are scheduled to expire in 1986 will continue to hold office until that time and reapportionment of their districts will be delayed until 1986.

Unlike the apportionment of House, Senate and Congressional Districts, the apportionment of County Commissioner Districts is not regulated by the Maine Constitution, but is governed

solely by statute. See 30 M.R.S.A. § 105-V. Consequently, as a matter of State Constitutional law, the Legislature is free to amend 30 M.R.S.A. § 105-V to provide for the "phased-in" reapportionment of County Commissioner Districts described in the proposed legislation attached to your opinion request.^{1/} Thus, this Office would answer your second question in the affirmative.

III. Another option would be to delay county reapportionment totally until 1986. Is this option permissible?

For the reasons expressed in response to your second inquiry, and subject to the qualification set forth in footnote 1, this Office answers your third question in the affirmative.

IV. Is it permissible to change the constitution of a district and allow the current office holder to assume the newly restructured districts until the term of office for which they were elected expires?

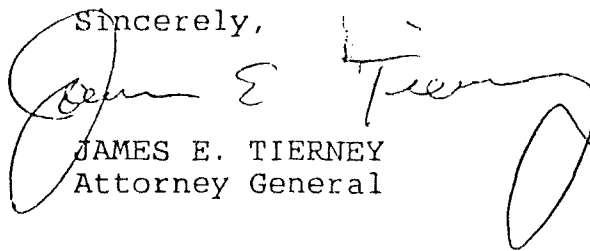
For the reasons expressed in response to your second inquiry, and subject to the qualification set forth in footnote 1, this Office answers your fourth question in the affirmative.^{2/}

^{1/} In reaching this conclusion this Office has operated under the assumption that a "phase-in" of county reapportionment or its complete postponement until 1986 would neither perpetuate nor create an apportionment scheme which violates the Federal Constitutional principle of "one-person one-vote" as articulated by both the United States Supreme Court and the Supreme Judicial Court of Maine. See, generally, Brown v. Thomson--U.S.--, 103 S.Ct. 2690 (1983); In Re 1983 Legislative Apportionment of House, Senate, and Congressional Districts, --A.2d-- (Me. December 8, 1983). If this assumption is true, your question presents no federal constitutional questions.

^{2/} This answer further assumes that the person designated to represent the new district satisfies all other statutory requirements for the representation thereof, such as residence within the district.

I hope this information is helpful to you, and please feel free to call upon me if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "James E. Tierney". The signature is written in dark ink and is positioned to the right of the typed name.

JAMES E. TIERNEY
Attorney General

JET/ec

cc: Senator R. Donald Twitchell
Representative Edward A. McHenry

AN ACT to Delay the Implementation of Reapportionment of County
Commissioner Districts

Emergency Preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the reapportionment plan for county commissioner districts has been completed pursuant to Public Law, chapter 510 and, as a result, 11 counties will have all 3 commissioners up for election in 1984 and 2 counties will lose the staggered term system altogether; and

Whereas, it is unfair and inimical to the electoral integrity of county government to require that commissioners who were elected to a 4-year term in 1982 be subject to an election in 1984; and

Whereas, the impact of the reapportionment plan on the staggered term system of county government was not fully realized prior to the completion of the plan; now, therefore,

Be it enacted by the people of the State of Maine, as follows:

30 MRSA §105-V, sub-§3, as enacted by PL 1983, c. 518, is amended to read:

3. Effect of reapportionment on county commissioner's terms of office. Notwithstanding any other provision of law, whenever a county commissioner district has been reapportioned, the term of the county commissioner from that district shall expire at the next election immediately following the reapportionment of the county commissioner district. The term of office that the county commissioner representing the new county commissioner district shall be elected to at that election shall be determined by this subsection. The term of office for a county

commissioner in a new district consisting of substantially the same area as the previous district shall be 4 years if the county commissioner in the previous district had served for only 2 years. The term of office for a county commissioner in a new district consisting of substantially the same area as the previous district shall be 2 years if the county commissioner in the previous district had served for 4 years. The apportionment commission in reapportioning a county commissioner district shall specify the term of office, as prescribed by this subsection, that the county commissioner representing that commissioner district shall be elected to. In subsequent elections, each county commissioner shall be elected to a 4-year term until the district is reapportioned under the provisions of this section. If any county commissioner district is not reapportioned, the term of office for that county commissioner district shall not expire under this subsection. That county commissioner's term of office shall be for the normal 4-year term until such time as the county commissioner district is reapportioned.

Notwithstanding the provisions of this subsection, if the application of this subsection for any county results in terms of office of the county commissioners which are not staggered, the terms of office of those 3 county commissioners shall expire and reapportionment for each district in that county shall take effect at the end of each commissioner's normal staggered 4-year term. The next term of office for each county commissioner in that county shall be 4 years.

Sec. 2. 30 MRSA §105-V, sub-§5 is enacted to read:

5. Effect of reapportionment on county commissioners' terms of office in 1984. Subsection 3 shall not apply to the county commissioners terms of office in 1984. Notwithstanding the reapportionment of any county commissioner district in 1984, the terms of office of all county commis-

sioners shall not expire until the end of their normal staggered 4-year term. This subsection is repealed January 1, 1988.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

Section 1 of this bill ensures that all county commissioners will serve staggered terms after the reapportionment of the county districts.

The county reapportionment plan enacted in 1983, ended the term of office of county commissioners who were in the middle of a 4-year term of office in 1984 and whose district was reapportioned in 1984. Section 2 of this bill deletes that requirement for the year 1984 because those county commissioners subject to that expiration of their term of office did not have notice of that when they ran for election in 1982.

(JRS102)