

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 6, 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 February 16, 1984 in which you have requested an opinion as to the constitutionality of proposed legislation entitled "AN ACT to Ensure Staggered Terms of Office of County Commissioners."^{1/} This bill, if enacted, would have the effect of delaying the full implementation of county district reapportionment, enacted by the Legislature last month, by permitting eleven commissioners elected in 1982 to complete their four-year terms of office. For the reasons explained below, it is the Opinion of this Department that such legislation would be constitutional.

In order to place your question in perspective, it is necessary to briefly review the Legislature's actions with respect to the reapportionment of county commissioner districts. By virtue of Chapter 518 of the Public Laws of 1983, (approved as emergency legislation on June 28, 1983), the Maine Apportionment Commission was directed to prepare a plan reapportioning the county commissioner districts throughout the State. See 30 M.R.S.A. § 105-V, as enacted by P.L. 1983, c. 518. Since each county has three commissioners elected to four-year terms on a staggered basis, the Legislature specified the effect reapportionment would have on the terms of office of

^{1/} A copy of this draft legislation is attached.

those commissioners currently holding office, some of whom were elected in 1980 and some in 1982. Section 105-V provides:

3. Effect of reapportionment on county commissioners' 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. (emphasis added).

Pursuant to its mandate, the Commission submitted its plan to the Clerk of the House of Representatives. As part of its plan, the Commission informed the Clerk of the House that as a result of 30 M.R.S.A. § 105-V(3), "eleven counties will have

all three commissioners up for election in 1984. . . . " As required by 30 M.R.S.A. § 105-V(1) the Clerk of the House submitted the Commission's plan to the Legislature which, on February 14, 1984, enacted as emergency legislation a plan for the reapportionment of county commissioner districts. 30 M.R.S.A. § 105-W(3) as enacted by P.L. 1983, c. 607. Chapter 607 implements the requirements of 30 M.R.S.A. § 105-V(3) thereby producing the result that eleven county commissioners elected to four-year terms in 1982 will have their terms of office reduced to two years.

The proposed legislation attached to your letter of February 16, 1984 would alter this situation by amending 30 M.R.S.A. § 105-W to provide that the terms of office of the eleven commissioners in question shall expire in 1986 as they normally would have had reapportionment not taken place. The effect of this proposed legislation would be to delay the full implementation of county reapportionment by deferring the election of commissioners in the affected districts until the terms of the current office-holders expire in 1986. Your inquiry is whether this proposal would run afoul of the Federal Constitution.^{2/} This Office concludes that it would not.

It is well established that under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution "electoral apportionment must be based on the general principle of population equality and that this principle applies to state and local elections." Abate v. Mundt, 403 U.S. 182, 185 (1971), citing Avery v. Midland County, 390 U.S. 474, 481 (1968). It also appears, however, that while a court in a malapportionment case has the authority to alter an incumbent's term of office,^{3/} the Equal

^{2/} In an Opinion dated January 31, 1984, this Office concluded that such a proposal would not violate any provision of the Constitution of Maine. See Op. Me. Att'y Gen. 84-6.

^{3/} In Mann v. Davis, 238 F. Supp. 458 (E.D.Va. 1964), aff'd sub nom. Hughes v. WMCA, Inc., 379 U.S. 694 (1965), the Court shortened the term of office of incumbent legislators who had been "[e]lected on a void pattern of representation." Id. 460. In Mann, however, the incumbents had been elected after the Court had ruled that Virginia's legislative apportionment plan was invalid and during a temporary stay of that ruling. Your question does not concern the constitutionality of the county commissioner districts existing prior to the enactment of P.L. 1983, c. 607, nor would it be appropriate for this Department to express an opinion on the constitutionality of an apportionment plan under which no further elections will be held.

Protection Clause does not "require[] a State to cast a validly elected official out of office prior to the expiration of his term, in order to give the residents of the revised district the opportunity to elect someone else immediately after a reapportionment." Twilley v. Stabler, 290 A.2d 636, 638 (Del. 1972) (emphasis original). See also Rodgers v. Commissioners Court of San Augustine County, 483 F.Supp. 779, 781 (E.D. Tex., 1980); Avens v. Wright, 320 F.Supp. 677, 683 (W.D.Va., 1970); Long v. Docking, 283 F.Supp. 539, 544 (D.Kan. 1968); Griswold v. County of San Diego, 32 Cal.App.3d 56, 107 Cal. Rptr. 845, 849-50 (4th Dist., 1973); New Democratic Coalition v. Austin, 41 Mich.App. 343, 200 N.W.2d 749, 755 (1972). The United States Supreme Court has not addressed this issue directly, but the conclusion reached by the cases just cited finds implicit support in the case of Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656, 675-76 (1964) in which the Supreme Court, after invalidating Maryland's legislative apportionment plan, permitted all incumbent legislators to complete their four-year terms of office. The Court in that case cautioned, however, that no new elections under the invalidated plan could be held. Id. at 676.

The proposed legislation accompanying your opinion request does not purport to authorize the holding of new elections under the apportionment of county commissioner districts in existence prior to the enactment of Chapter 607. On the contrary, it would merely provide that incumbent office-holders may complete the terms to which they were elected, at the expiration of which elections pursuant to reapportionment will be held.^{4/} This procedure of delaying in part the full effect of a reapportionment plan for the purpose of retaining a staggered system of elections has been sustained by several courts,^{5/} and this office has found no case in which a court has required that all officials in a staggered system must stand for election immediately pursuant to a new reapportionment. As a California Appellate Court put it in

^{4/} This Department's review of the reapportionment plan enacted by the Legislature as Chapter 607 of the Public Laws of 1983 indicates that it clearly complies with the constitutional requirement of "one-person one-vote."

^{5/} See Twilley v. Stabler, 290 A.2d 636 (Del. 1972); Rodgers v. Commissioners Court of San Augustine County, 483 F. Supp. 779 (E.D. Tex. 1980); Griswold v. County of San Diego, 32 Cal. App. 3d 56, 107 Cal. Rptr. 845 (4th Dist., 1973); New Democratic Coalition v. Austin, 41 Mich. App. 343, 200 N.W.2d 749 (1972).

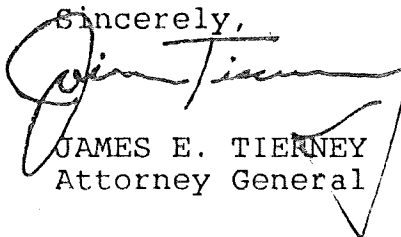
Griswold v. County of San Diego. 32 Cal.App.3d 56, 107 Cal.
Rptr. 845, 848, 849 (1973):

Whenever the constitutional requirement of reapportionment is superimposed upon a system in which representatives are elected for staggered terms, it inevitably follows from the fact district boundaries must be changed to achieve equality of population that the right of some voters to vote for representatives at the next election will be deferred. . . . A county reapportionment plan based upon rational considerations which achieves equality of population among the districts, . . . , does not violate the equal protection requirement merely because it makes substantial changes in existing district lines and thus defers the right to vote for [commissioner] at the next election of more voters than some other plan.

It thus appears that the plan contained in the proposed legislation is not unconstitutional.

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

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec
Enc.

cc: Sen. R. Donald Twitchell
Rep. Edward A. McHenry
Chairmen, Joint Standing Committee on
Local and County Government

COPY

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No.

6
7 H.P. House of Representatives,
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10 EDWIN H. PERT, Clerk

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12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FOUR
16

17 AN ACT to Ensure Staggered
18 Terms of Office of County
19 Commissioners.
20

21 Be it enacted by the People of the State of Maine as
22 follows:

23 Sec. 1. 30 MRSA §105-W, sub-§1, ¶C, as enacted
24 by PL 1983, c. 607, §2, is amended to read:

25 C. Commissioner District Number 3, in the County
26 of Androscoggin, consists of all of the City of
27 Lewiston, excepting that portion as described in
28 County Commissioner District Number 1. Notwith-
29 standing the provisions of section 105-V, subsec-
30 tion 3, the term of office of the county commis-
31 sioner from this district shall expire in 1984
32 1986, in 1988 and every 4 years thereafter.

33 Sec. 2. 30 MRSA §105-W, sub-§2, ¶C, as enacted
34 by PL 1983, c. 607, § 2, is amended to read:

1 C. Commissioner District Number 3 consists of
2 the municipalities of Caswell Plantation, Cyr
3 Plantation, Fort Kent, Frenchville, Grand Isle,
4 Hamlin, Limestone, Madawaska, New Canada, New
5 Sweden, Saint Agatha, Stockholm, Van Buren,
6 Wallagrass Plantation, Woodland and the unorga-
7 nized territory of Connor. Notwithstanding the
8 provisions of section 105-V, subsection 3, the
9 term of office of the commissioner from this dis-
10 trict shall expire in ~~1984~~ 1986, in ~~1986~~ 1988 and
11 every 4 years thereafter.

12 Sec. 3. 30 MRSA §105-W, sub-§3, ¶C, as enacted
13 by PL 1983, c. 607, §2, is amended to read:

14 C. Commissioner District Number 3 consists of
15 the municipalities of Bridgton, Brunswick, Casco,
16 Cumberland, Freeport, Gray, Harpswell, Harrison,
17 Naples, New Gloucester, North Yarmouth, Pownal,
18 Raymond, Sebago, Windham and Yarmouth. Notwith-
19 standing the provisions of section 105-V, sub-
20 section 3, the term of office of the commissioner
21 from this district shall expire in ~~1984~~ 1986, in
22 1988 and every 4 years thereafter. years there-
23 after.

24 Sec. 4. 30 MRSA §105-W, sub-§5, ¶B, as enacted
25 by PL 1983, c. 607, § 2, is amended to read:

26 B. Commissioner District Number 2 consists of
27 the municipalities of Brooklin, Brooksville,
28 Bucksport, Castine, Deer Isle, Orland, Penobscot,
29 Sedgwick, Stonington and Verona. Notwithstanding
30 the provisions of section 105-V, subsection 3,
31 the term of office of the commissioner from this
32 district shall expire in ~~1984~~ 1986, in 1988 and
33 every 4 years thereafter.

34 Sec. 5. 30 MRSA §105-W, sub-§6, ¶B, as enacted
35 by PL 1983, c. 607, § 2, is amended to read:

36 B. Commissioner District Number 2 consists of
37 the municipalities of Belgrade, Farmingdale, Fay-
38 ette, Gardiner, Hallowell, Litchfield,
39 Manchester, Monmouth, Mount Vernon, Pittston,
40 Readfield, Rome, Vienna, Wayne, West Gardiner and
41 Winthrop. Notwithstanding the provisions of

1 section 105-V, subsection 3, the term of office
2 of the commissioner from this district shall ex-
3 pire in ~~1984~~ 1986, in 1988 and every 4 years
4 thereafter.

5 Sec. 6. 30 MRSA §105-W, sub-§7, ¶A, as enacted
6 by PL 1983, c. 607, § 2, is amended to read:

7 A. Commissioner District Number 1 consists of
8 the municipalities of Owls Head, Rockland and
9 South Thomaston. Notwithstanding the provisions
10 of section 105-V, subsection 3, the term of of-
11 fice of the commissioner from this district shall
12 expire in ~~1984~~ 1986, in 1988 and every 4 years
13 thereafter.

14 Sec. 7. 30 MRSA §105-W, sub-§9, ¶C, as enacted
15 by PL 1983, c. 607, § 2, is amended to read:

16 C. Commissioner District Number 3 consists of
17 the municipalities of Buckfield, Canton,
18 Greenwood, Hartford, Hebron, Otisfield, Oxford,
19 Paris, Sumner, West Paris, Woodstock and the un-
20 organized territories of Milton and that portion
21 of South Oxford known as Albany. Notwithstanding
22 the provisions of section 105-V, subsection 3,
23 the term of office of the commissioner from this
24 district shall expire in ~~1984~~ 1986, in 1988 and
25 every 4 years thereafter.

26 Sec. 8. 30 MRSA §105-W, sub-§11, ¶C, as enacted
27 by PL 1983, c. 607, § 2, is amended to read:

28 C. Commissioner District Number 3 consists of
29 the municipalities of Atkinson, Bowerbank,
30 Brownville, Lake View Plantation, Medford, Milo,
31 Sebec and the unorganized territories of Barnard,
32 Northeast Piscataquis, Northwest Piscataquis and
33 Southeast Piscataquis. Notwithstanding the pro-
34 visions of section 105-V, subsection 3, the term
35 of office of the commissioner from this district
36 shall expire in ~~1984, in 1986 and 1986~~ every 4
37 years thereafter.

38 Sec. 9. 30 MRSA §105-W, sub-§12, ¶C, as enacted
39 by PL 1983, c. 607, § 2, is amended to read:

1 C. Commissioner District Number 3 consists of
2 that portion of the City of Bath north and west
3 of a line described as follows: Beginning at the
4 Carleton Bridge a line west to King Street at Wa-
5 ter Street, thence west on King Street to Wash-
6 ington Street, thence south on Washington Street
7 to Bath Street, thence west on Bath Street to
8 High Street, thence south on High Street to Pine
9 Street, thence east on Pine Street to Washington
10 Street and thence south on Washington Street to
11 an inlet of the Kennebec River (which is just
12 north of Hunt Street). Notwithstanding the pro-
13 visions of section 105-V, subsection 3, the term
14 of office of the commissioner from this district
15 shall expire in ~~1984~~ 1986, in 1988 and every 4
16 years thereafter.

17 Sec. 10. 30 MRSA §105-W, sub-§13, ¶A, as enacted
18 by PL 1983, c. 607, § 2, is amended to read:

19 A. Commissioner District Number 1 consists of
20 the municipalities of Anson, Athens, Bingham,
21 Brighton Plantation, Cambridge, Caratunk,
22 Dennistown Plantation, Embden, Harmony, Hartland,
23 Highland Plantation, Jackman, Moose River,
24 Moscow, New Portland, Palmyra, Pleasant Ridge
25 Plantation, Ripley, St. Albans, Starks, The Forks
26 Plantation, West Forks Plantation and the unorga-
27 nized territories of Central Somerset, Northeast
28 Somerset, Northwest Somerset and Seboomook Lake.
29 Notwithstanding the provisions of section 105-V,
30 subsection 3, the term of office of the commis-
31 sioner from this district shall expire in ~~1984~~
32 1986, in 1986 1988 and every 4 years thereafter.

33 Sec. 11. 30 MRSA §105-W, sub-§14, ¶A, as enacted
34 by PL 1983, c. 607, § 2, is amended to read:

35 A. Commissioner District Number 1 consists of
36 the municipalities of Belfast, Belmont,
37 Islesboro, Lincolnville and Northport. Notwith-
38 standing the provisions of section 105-V, sub-
39 section 3, the term of office of the commissioner
40 from this district shall expire in ~~1984~~ 1986, in
41 1988 and every 4 years thereafter.

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STATEMENT OF FACT

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The purpose of this bill is to ensure that the terms of the county commissioners are staggered in each county district upon the expiration of the full 4-year terms which are currently being served.

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