

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



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

January 15, 1986

Honorable Harry L. Vose  
Chairman, Joint Standing Committee  
on Utilities  
House of Representatives  
State House Station #2  
Augusta, Maine 04333

Dear Representative Vose:

I am writing in response to your recent question concerning the effect of the filing of an initiative petition, pursuant to Article IV, Part 3, Section 18 of the Maine Constitution, on an outstanding order of the Maine Public Utilities Commission directing that local measured telephone service be implemented by the New England Telephone and Telegraph Company in certain areas of the State on February 15, 1986. For the reasons which follow, it is the Opinion of this Department that the filing of such a petition, even prior to the effective date of the Commission's order, would have no bearing on its effectiveness.

Article IV, Part 3, Section 18 of the Maine Constitution provides that persons seeking to enact, amend or repeal legislation may file petitions to that effect, signed by not less than 10 percent of the total vote for Governor cast in the preceding gubernatorial election, requesting that the Legislature enact such legislation. In the case of a second regular session of the Legislature, such petitions must be filed on or before the 20th day after the convening of the session. If the Legislature does not enact the initiated bill as proposed, the Constitution provides that the measure shall be submitted to the electorate.

Noticeably absent from this constitutional procedure for the enactment of legislation is any provision concerning the effect of filing of initiative petitions on existing law. On its face, it is quite clear that the filing of such petitions

APR 29 1986

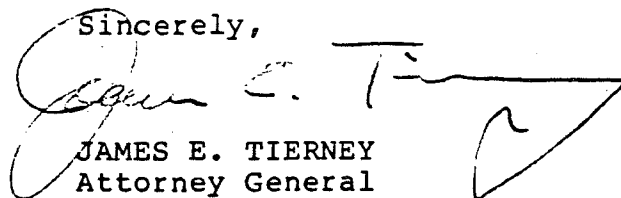
has no effect upon existing law. While Article IV, Part 3, Section 17, the so-called "people's veto" provision, specifies that the filing of a petition during the period of 90 days following the recess of any session of the Legislature prevents the effectiveness of any non-emergency law passed by that session until such law is ratified by a majority of the electorate at a state-wide election, that provision has no effect on laws in effect as a result of previous legislative action. Since the question which you pose does not arise during such a 90-day period, the "people's veto" provisions of the Maine Constitution do not apply.

Beyond this, of course, the order which the initiative petition seeks to affect is not legislation at all, but the quasi-judicial action of a state agency, the Public Utilities Commission, with regard to a particular private entity, a telephone company. Thus, even if the petition at issue here were to have been filed during the 90-day period following the recess of a session of the Legislature, it would be ineffective to prevent the entry into force of such an order, since the order is not one which was made by the Legislature. For this additional reason, therefore, the filing of the petition would have no bearing on the effectiveness of the order..

The only way for the effectiveness of the Commission's order to be suspended through the legislative process would be for the Legislature itself to pass emergency legislation prior to the February 15, 1986 effective date, pursuant to Article IV, Part 3, Section 16 of the Maine Constitution. Such action, of course, requires a two-thirds vote of all the members elected to each House. There is no other constitutional mechanism available either to the Legislature or the citizens of the State to prevent the entry into force of the Commission's order. The only available mechanism is the passage of emergency legislation, unless, of course, the Commission can be persuaded informally to reverse its action.

I hope the foregoing is of assistance to you. Please feel free to reinquire if further clarification is necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney", written over a large, stylized, handwritten flourish that extends to the right and loops back down.

JAMES E. TIERNEY  
Attorney General

JET-ec

cc: Peter A. Bradford, Chairman  
Public Utilities Commission