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ATTORNEY GENERAL

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

April 10, 1986

Honorable John E. Baldacci
Honorable Harry L. Vose
Joint Standing Committee on Utilities
State House Station #13
Augusta, Maine 04333

Dear Senator Baldacci and Representative Vose:

You have inquired whether it is within the power of the Legislature to reform a ballot question drafted by the Secretary of State, by which initiated legislation not enacted by the Legislature will be presented to the voters. In the Opinion of this Department, legislative intervention to alter the ballot question drafted by the Secretary of State would be found to be inconsistent with the Maine Constitution and not within the authority of the Legislature.

The only provision of the Maine Constitution dealing with the ballot question presenting initiated legislation is the following sentence from Article IV, part 3, § 20:

> The full text of a measure submitted to a vote of the people under the provisions of the Constitution need not be printed on the official ballots, but, until otherwise provided by the Legislature, the Secretary of State shall prepare the ballots in such form as to present the question or questions concisely and intelligibly.

The plain import of this provision is that the administrative task of drafting a ballot question be committed to the Secretary of State, subject to some form of legislative control. From the language of the sentence itself, however, it is unclear whether the drafters of the constitutional provision intended the clause "until otherwise provided by the Legislature" to modify (a) the designation of the Secretary of State as the drafter of the ballot question; or (b) the form of

a particular ballot; or (c) the standard that the question be presented "concisely and intelligibly." Furthermore, the provision does not specify the manner in which legislative control is to be exercised, that is, whether by general legislation only, or also by legislation affecting only a single question or ballot.[1/]

Despite numerous amendments to the several constitutional provisions concerning the reserved power of the people to exercise the legislative power, this sentence has remained unchanged since these provisions were enacted in 1908. Res. 1907, ch. 121 (approved, 1908; effective January 6, 1909). Research reveals no judicial application or construction of this provision. The legislative history of the amendments sheds no direct light on the question. It does, though, strongly establish that the Legislature's approval of the amendments, without a dissenting vote in either house, occurred in a context of a broad popular understanding that it was the privilege and the duty of the citizens to inform themselves of the merits of legislation proposed by initiative, and that they were fully competent to do so. Legis. Rec. 638-649 (1907). At the time, of course, the Legislature met only biennially (unless called into special session), and the ballot question would be written after their adjournment. Thus, at the time the provision was adopted, there was neither a perceived need, nor a practical opportunity, for the Legislature to provide a check on the form of any particular ballot. Moreover, it is doubtful that the authors of the initiative provisions would repose ultimate control of the ballot question in the hands of the Legislature, when the entire initiative process is designed as a means of overcoming a Legislature that refuses to enact the measure itself.

The possibility cannot be ignored that the Secretary of State, or any other designated official, might fail to satisfy

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[1/] In 1983, the Legislature exercised its constitutional authority with respect to referendum ballots to enact general legislation now codified at 21-A M.R.S.A. §§ 901(4) and 906(6) and (7). P.L. 1983, c. 410. These statutory provisions affected, respectively, the time when the Secretary of State was required to draft the ballot question, the intelligibility standard that must be satisfied, and the order in which multiple referenda questions were to be presented on the ballot. Having been enacted legislatively, it is plain that these additional statutory requirements may be amended by the same process. The exercise of this power by general legislation, however, does not confirm or negate the existence of legislative power to affect the presentation of referenda ballot questions in other respects, or by other means.

the "concise and intelligible" standard imposed by the Constitution. But that possibility is inadequate to justify implying a power in the Legislature to reform the Secretary of State's ballot question, when every historical indication is to the contrary.[2/]

The cardinal principle of constitutional and statutory construction seeks to effectuate the purpose of the provision. For the reasons set forth herein, it is the opinion of this Department that the quoted sentence of Art. IV, pt. 3, § 20 of the Maine Constitution was not intended to authorize the Legislature to revise a ballot question drafted by the Secretary of State to present an initiated measure to the voters.

Sincerely,

JAMES E. TIERNEY
Attorney General

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cc: Legislative Council

[2/] Since the Maine Administrative Procedure Act became effective in 1978, the Secretary of State's decision in drafting a ballot question for initiated legislation has been subject to judicial review at the request of any person aggrieved by the decision. 5 M.R.S.A. § 11001 (Supp. 1985).