

# 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

May 8, 1987

Honorable John L. Martin  
Speaker of the House  
State House Station #6  
Augusta, Maine 04333

Dear Speaker Martin:

You have inquired into the extent to which the adoption of either of two proposed amendments to Article I, Section 16 of the Maine Constitution would affect the power of the Legislature to regulate the use of weapons in Maine. Since such a question involves predicting how the Supreme Judicial Court of Maine will interpret a constitutional provision which has yet to be enacted, any response is necessarily tentative. Nonetheless, on the basis of decisions of other state courts of last resort interpreting similar provisions, it is the opinion of this Department that future judicial review would not result in invalidation of legislation reasonably related to the protection of the public health, safety and welfare.

Article I, Section 16 at present provides:

Every citizen has a right to keep and bear arms for the common defense, and this right shall never be questioned.

Last year, the Supreme Judicial Court held that this provision, like its counterpart in Massachusetts,<sup>1/</sup> does not confer an individual right to bear arms, but is limited to insuring the collective right of all citizens of Maine to maintain an

---

<sup>1/</sup> Massachusetts Constitution, Article I, Section 17. See Commonwealth v. Davis, 343 N.E.2d 847 (Mass. 1976).

organized militia. State v. Friel, 508 A.2d 123, 125-26 (Me. 1986).<sup>2/</sup> Maine thus falls within a group of nine states (Alaska, Arkansas, Hawaii, Maine, Massachusetts, North Carolina, South Carolina, Tennessee, Virginia) whose constitutions appear to provide only for a collective right to bear arms. Nine other states have no provision for a right to bear arms at all. Five states (Georgia, Idaho, Illinois, Louisiana and Rhode Island) provide for an individual right to bear arms unrestricted as to purpose, while the remaining twenty-seven states limit such a right to various forms of defense of persons or property, as well as providing a collective right to bear arms for the common defense.<sup>3/</sup>

The proposed amendment to the Maine Constitution about which you inquire is contained in Legislative Document 651 and would simply strike the reference to the common defense in Article I, Section 16 (as well as the phrase "and this right shall never be questioned"). The enactment of such an amendment would therefore move Maine into the category of states which guarantee an individual right to bear arms without limitation as to purpose. The alternative amendment about which you inquire would substitute for the phrase "common defense" the phrase "common good," a concept not found in any existing state constitutional provision concerning the right to bear arms. It is therefore difficult to state how the clause might be interpreted if this particular language were adopted.<sup>4/</sup>

---

<sup>2/</sup> The Court also reiterated the well established principle that the Second Amendment to the United States Constitution, also dealing with the right to bear arms, applies only to the United States Congress and not to the states. Id. at 125, citing, inter alia, Miller v. Texas, 153 U.S. 535 (1894).

<sup>3/</sup> The text of the forty-one state constitutional provisions concerning a right to bear arms are attached as an appendix to this Opinion.

<sup>4/</sup> On the face of it, the incorporation of the concept of the "common good" is ambiguous. The phrase is quite similar to that of the "common defense," since both require some kind of common, as opposed to individual, justification in order for a person to come within the constitutional right to bear arms. If the intention of introducing such a concept is, however, to guarantee some freedom of legislative action as well as to establish an individual right to bear arms, perhaps the proposed amendment could be reworded along the lines of one of the existing state constitutional provisions to more clearly achieve that result. For example, see the Illinois provision ("Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.")

But regardless of how an amended Article I, Section 16 should be categorized, it is likely that the elimination of the collective restriction to the right to bear arms in Maine would not be held to invalidate existing laws relating to the possession and use of weapons. Even in those states where an individual right to bear arms is declared, and is not limited to some notion of defense of person or property, the courts have been very reluctant to strike down reasonable statutes enacted pursuant to the police power concerning firearms. See Landers v. State, 299 S.E.2d 707, 709-10 (Ga. 1983); State v. Grob, 690 P.1d 951 (Idaho App. 1984); Kalodinos v. Village of Morton Grove, 470 N.E.2d 266, 269-273 (Ill. 1984); State v. Amos, 343 So.2d 166 (La. 1977); State v. Storms, 308 A.2d 463, 464 (R.I. 1973). See generally Note, The Individual Right to Bear Arms: An Illusory Public Pacifier?, 1986 Utah L. Rev. 751 (1986); Note, The Impact of State Constitutional Right to Bear Arms Provisions on State Gun Control Legislation, 38 U. Chi. L. Rev. 185 (1970). Indeed, courts have been very reluctant to strike down such laws under any constitutional provision whatever. As of 1966, for example, only two courts since the beginning of the century had done so. Note, The Philadelphia Firearms Ordinance - A Case of Comprehensive Oversight, 114 U. Pa. L. Rev. 550, 553, n. 27 (1966), cited with approval in Commonwealth v. Davis, supra note 1 at 849, n. 5. It seems clear, therefore, that the creation of a provision guaranteeing an individual (as opposed to collective) constitutional right to bear arms would not be found to negate legislative authority to reasonably regulate firearms.

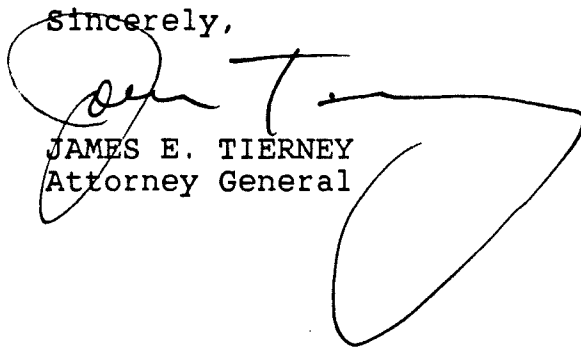
This is not to say, however, that the precise constitutional parameters of such a new right would be clear. It would therefore be wise for the Legislature to develop an extensive legislative history concerning its intention in passing a constitutional amendment, to which the Courts will give legal cognizance, Opinion of the Justices, 142 Me. 409, 415-16 (1947); Kalodimos v. Village of Morton Grove, supra. In anticipation of circumstances where the courts will be obliged to interpret the new constitutional amendment and apply it to a new statutory provision, the legislative intent should now be made as clear as possible.

---

5/ The cases were In re Brickery, 70 Pac. 609 (Idaho 1902) and People v. Zerillo, 189 N.W. 927 (Mich. 1922).

I hope the foregoing is a helpful response to your inquiry. Please feel free to reinquire if further assistance is necessary.

sincerely,

A large, stylized handwritten signature in black ink, appearing to read "James E. Tierney". The signature is written over the typed name and extends to the right, ending in a long horizontal stroke.

JAMES E. TIERNEY  
Attorney General

JET/ec  
Enc.

cc: Sen. John L. Tuttle, Jr.  
Rep. Donnell P. Carroll  
Co-Chairpersons, Joint Standing Committee  
on State and Local Government  
Sen. Charles P. Pray  
Rep. Thomas A. Duffy  
Rep. Richard P. Ruhlin  
Co-sponsors, Legislative Document 651

**STATE CONSTITUTIONAL GUARANTEES ON  
THE RIGHT TO KEEP AND BEAR ARMS**

Forty-one (41) states have constitutional guarantees on the right to keep and bear arms.

Alabama: That every citizen has a right to bear arms in defense of himself and the state. Article I, Section 26.

Alaska: A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Article I, Section 19.

Arizona: The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article 2, Section 26.

Arkansas: The citizens of this State shall have the right to keep and bear arms for their common defense. Article II, Section 5.

Colorado: The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons. Article II, Section 13.

Connecticut: Every citizen has a right to bear arms in defense of himself and the state. Article I, Section 15.

Florida: The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law. Article I, Section 8.

Georgia: The right of the people to keep and bear arms, shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne. Article I, Section I, para. VIII.

Hawaii: A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Article I, Section 15.

Idaho: The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person, nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent passage of legislation providing penalties for the possession of firearms by a convicted

felon, nor prevent the passage of legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony. Article I, Section 11.

Illinois: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed. Article I, Section 22.

Indiana: The people shall have a right to bear arms, for the defense of themselves and the State. Article I, Section 32.

Kansas: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power. Kansas Bill of Rights, Section 4.

Kentucky: All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: \*\*\* 7. The right to bear arms in defense of themselves and of the state, subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons. Kentucky Bill of Rights, Section I, para. 7.

Louisiana: The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person. Article I, Section 11.

Maine: Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned. Article I, Section 16.

Massachusetts: The people have a right to keep and bear arms for the common defense. And as, in times of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it. Massachusetts Declaration of Rights, Part I, Article XVII.

Michigan: Every person has a right to keep and bear arms for the defense of himself and the state. Article I, Section 6.

Mississippi: The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power where thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons. Article 3, Section 12.

Missouri: That the right of every citizen to keep and bear

arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons. Article I, Section 23.

Montana: The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons. Article II, Section 12.

Nevada: Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. Art. 1, Section II, para. 1.

New Hampshire: All persons have the right to keep and bear arms in defense of themselves, their families, their property, and the state. Part First, Art. 2-a.

New Mexico: No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms. Article II, Section 6.

North Carolina: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice. Article I, Section 30.

North Dakota: All individuals are by nature equally free and independent and have certain inalienable rights, among which are ... to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreatnal, and other lawful purposes, which shall not be infringed. Article I, Section 1.

Ohio: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power. Article I, Section 4.

Oklahoma: The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the



Legislature from regulating the carrying of weapons. Article 2, Section 26.

Oregon: The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power. Article I, Section 27.

Pennsylvania: The right of the citizens to bear arms in defence of themselves and the State shall not be questioned. Article I, Section 21.

Rhode Island: The right of the people to keep and bear arms shall not be infringed. Article I, Section 22.

South Carolina: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. Article I, Section 20.

South Dakota: The right of the citizens to bear arms in defense of themselves and the state shall not be denied. Article VI, Section 24.

Tennessee: That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime. Article I, Section 26.

Texas: Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime. Article I, Section 23.

Utah: The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the State, as well as for the other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms. Article I, Section 6.

Vermont: That the people have a right to bear arms for the defence of themselves and the State -- and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power. Chapter I, Article 16.

Virginia: That a well regulated militia, composed of the

body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power. Article I, Section 13.

Washington: The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article I, Section 24.

West Virginia: A person has the right to keep and bear arms for the defense of self, family, home, and state, and for lawful hunting and recreational use. Article III, Section 22.

Wyoming: The right of citizens to bear arms in defense of themselves and of the state shall not be denied. Article I, Section 24.

#### STATES WITHOUT CONSTITUTIONAL PROVISIONS:

Nine (9) states do not have a constitutional provision on arms: California, Delaware, Iowa, Maryland, Minnesota, Nebraska, New Jersey, New York, and Wisconsin.