

# MAINE STATE LEGISLATURE

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ATTORNEY GENERAL

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

December 31, 1987

Honorable Judy C. Kany  
Honorable Charles R. Priest  
Chairpersons, Joint Standing Committee  
on Legal Affairs  
State House Station #2  
Augusta, Maine 04333

Dear Senator Kany and Representative Priest:

You have inquired whether it would constitute an unconstitutional delegation of legislative power for the State of Maine to enact a statute limiting the number of random numbers which may be used by the Tri-State Lotto Commission in the operation of the Tri-State Lottery contingent upon the enactment of similar legislation by the other states who are members of the Commission. For the reasons which follow, it is the Opinion of this Department that the enactment of such legislation would not constitute an unconstitutional delegation of legislative power.

The circumstances which give rise to your question are as follows: at the Second Special Session of the 113th Legislature, the Maine Senate and House of Representatives enacted Legislative Document No. 1931, "AN ACT Relating to the Numbers Pool in the Tri-State Lotto." This bill is quite simple in its purpose: it seeks to limit to 36, from which no more than 6 are to be selected, the random numbers which may be employed by the Tri-State Lotto Commission in the operation of the Tri-State Lottery. Because, however, any amendment to the Tri-State Lotto Compact requires the concurrence of New Hampshire and Vermont, the other participating states, the legislation is made effective upon the enactment of similar legislation by those two states. You indicate, however, that Governor McKernan, whose approval the bill is currently

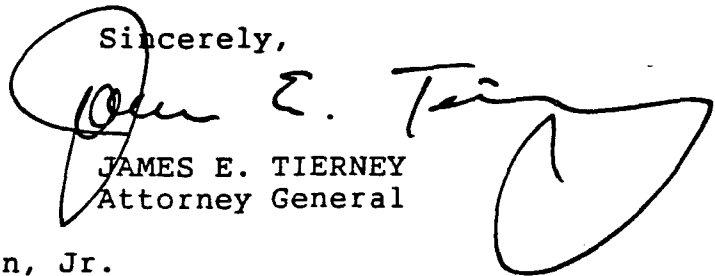
awaiting, has indicated his reservation as to its constitutionality in view of the doctrine that the state may not delegate its legislative power to any other body, including other states.

As indicated by the Supreme Judicial Court of Maine most recently in Lucas v. Maine Commission of Pharmacy, 472 A.2d 904 (Me. 1984), the constitutional prohibition against delegation of legislative power is based upon Article IV, Section 1 of the Maine Constitution which vests the legislative power of the state in the House of Representatives and the Senate. Id. at 908-09. Under this doctrine, the State Legislature may not delegate its legislative power to some other body. However, as the Court in Lucas pointed out, the courts "have long recognized that a fact or event that has significance independent of a legislative act may be incorporated by reference into a statute without running afoul of the non-delegation doctrine." Lucas v. Maine Commission of Pharmacy, 472 A.2d at 909. Generally, the rule is that if the independent act upon which the effectiveness of the state statute is made conditional is discrete and does not involve the exercise of legislative discretion, it will fall within the exception, and its use by the Legislature will not violate the non-delegation doctrine. See generally Opinion of the Justices, 460 A.2d 1341, 1347-49 (1982); Superintending School Committee of Bangor v. Bangor Educational Association, 433 A.2d 383 (Me. 1981).

In the view of this Department, the rendering of the proposed amendment to the Tri-State Lotto Compact contingent upon the enactment of similar legislation by the other participating member states satisfies these requirements. The Maine Legislature has delegated no discretion to the other two states. It has simply provided that if the other two states agree with its proposed amendment to the Compact, that amendment shall become effective. Thus, L.D. 1931 does not pose any constitutional problem, and may be safely approved by the Governor.

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY  
Attorney General

JET/ec

cc: Honorable John R. McKernan, Jr.  
Sen. Charles P. Pray  
Rep. John Jalbert  
Sponsors of Leg. Doc. 1931