

# MAINE STATE LEGISLATURE

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ATTORNEY GENERAL

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

December 27, 1988

Stephen R. Crockett, Chairman  
State Compensation Commission  
Office of Fiscal and Program Review  
State House Station #5  
Augusta, Maine 04333

Dear Mr. Crockett:

I am writing in response to an inquiry on behalf of the State Compensation Commission from the Office of Fiscal and Program Review soliciting the opinion of this Department as to the power of the Legislature to increase the salary of a sitting Governor during his first term in office, to be effective upon the commencement of his second, consecutive term. For the reasons which follow, it is the opinion of this Department that, while the Legislature may, of course, pass a statute raising the salary of the Governor at any time, such a statute may not be applied to a sitting Governor for so long as he continues without break in office.

Article V, Part First, Section 6 of the Maine Constitution provides:

The Governor shall, at stated times, receive for his services a compensation, which shall not be increased or diminished during his continuance in office.

This provision, which appears in the original Maine Constitution of 1821, has not been interpreted by the Supreme Judicial Court.

The issue which your question presents is the meaning of the words "continuance in office," a phrase which also appears in the provision of the Maine Constitution relating to the compensation of judges. Me.Const., art. VI, § 2 (The judges of the State, who serve for terms of seven years, "shall, at

stated times, receive a compensation, which shall not be diminished during their continuance in office.") There is no indication in the debates of the Maine Constitutional Convention of 1819-20 as to what the intention of the framers of the Maine Constitution was when they included this phrase in the compensation clauses in question. Nor is there any indication in the Constitution of the Commonwealth of Massachusetts, from which Maine separated in 1821, as to the meaning of the phrase, the compensation clauses of that state's constitution being entirely different. Of possible significance, however, is the phrasing of the compensation clauses for the President of the United States and the judges of the United States in the Federal Constitution, which entered into force some 30 years previously, and would have therefore been available as a model to the Maine framers. Article III, Section 1 of that document provides that the federal judges "shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office," language almost identical to that of the two compensation clauses in the Maine Constitution. However, Article II, Section 1, paragraph 7, of the United States Constitution provides:

The President shall, at stated Times, receive for his Services a Compensation which shall neither be increased nor diminished during the Period for which he shall have been elected, . . .

Thus, it is clear that, under the United States Constitution, federal judges, who serve for life, may not have their compensation diminished during their tenure in office, but that the President may have his compensation increased or decreased, so long as that change is not effective during the President's term of office in which the change is enacted.

The phrase "during the period for which he shall have been elected" was therefore not unknown to the drafters of the Maine Constitution. Indeed, the drafters used that very phrase in the provision of the Maine Constitution prohibiting members of the Legislature from being appointed to certain Executive Branch positions during their terms. Me.Const., art. IV, pt. 3, § 10.<sup>1/</sup> Thus, had the drafters of the Maine

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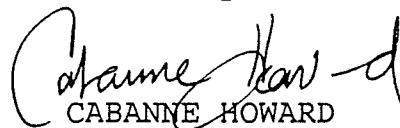
<sup>1/</sup> "No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office for profit under this State, which requires the approval of the Legislature for appointment or which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people." (Emphasis added)

Constitution wanted to allow the Legislature to increase the salary of a sitting Governor to be effective in future terms of office of that Governor, they could easily have done so by using the terms of the compensation clause of the President in the United States Constitution, terms of which they made use in at least one other place in the Maine Constitution. Since they did not choose to employ those terms in the compensation clause relating to the Maine Governor, it must be concluded that they intended to prohibit the Legislature from raising a sitting Governor's salary for so long as he continued in office.

This Department regrets that the effects of this conclusion may be severe, in an inflationary age, on a Governor commencing on a term of office which may last for as long as eight years. It must be remembered, however, that at the time of the establishment of the Maine Constitution, Governors served for only one year and had no constitutional impediment to indefinite reelection. Thus, it may be that the framers of the Maine Constitution intended, by including the phrase "continuance in office" rather than the phrase "during the term for which he shall be elected" in the Governor's compensation clause, to prohibit a politically powerful Governor from inducing the Legislature into passing salary increases for his personal benefit. The fact that the President of the United States has served, from the beginning of the Republic, a four-year term may have motivated the framers of the United States Constitution not to limit the power of Congress to increase his salary so severely. In any event, the contrast in meaning between the phrase "continuance in office" and the phrase "during the term for which he shall have been elected" is stark, and must be given effect.

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

Sincerely,



CABANNE HOWARD  
Deputy Attorney General  
Chief, Opinions Division

CH/ec

cc: Governor John R. McKernan, Jr.

Bent Schlosser

Director, Office of Fiscal and Program Review