JAMES E. TIERNEY
ATTORNEY GENERAL

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

August 10, 1989

Senator Michael D. Pearson
Chairman, Joint Standing Committee on
Appropriations
Maine State Senate
State House Station #3
Augusta, Maine 04333

Dear Senator Pearson:

You have inquired whether legislation authorizing the issuance of bonds passed by two-thirds of both Houses of the Legislature pursuant to Article IX, Section 14 of the Maine Constitution must be presented to the Governor for his approval prior to submission to the voters of the State for their ratification. For the reasons which follow, it is the Opinion of this Department that the Governor's approval is not required for bond issues.

Article IX, Section 14 of the Maine Constitution provides in pertinent part:

> The Legislature shall not create any debt or debts . . . which shall singly, or in the aggregate . . . exceed $2,000,000 . . . excepting . . . that whenever two-thirds of both Houses shall deem it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the Legislature may authorize the issuance of bonds on behalf of the State at such times and in such amounts and for such purposes as approved by such action . . . .

This provision, which was added to the Maine Constitution by Amendment LXVII, effective October 12, 1950, is silent on its

face regarding whether the participation of the Governor in the bond issuance process is required. Moreover, there is no indication in the legislative history of the provision whether its proponents intended that the Governor be so involved, nor has the issue of his involvement been addressed by the Maine Supreme Judicial Court. Thus, in answering your question, this Department is left only with the plain language of the provision to assist it.

In interpreting that language, one notes first that the operative language of the provision is that "whenever two-thirds of both Houses shall deem it necessary, . . . the Legislature may authorize the issuance of bonds . . . ." The provision thus stands in stark contrast to the provision of the Constitution governing the passage of ordinary legislation, which provides that "every bill or resolution, having the force of law, . . . which shall have passed both Houses, shall be presented to the Governor . . . ." Me. Const., art. IV, pt. 3, § 2. (Emphasis added). On its face, therefore, the bond issue provision does not expressly contemplate participation by the Governor, whereas the provision governing ordinary legislation does.

The only issue which your question presents, therefore, is whether, by using the phrase "by proper enactment", the authors of the bond issue provision intended to incorporate by reference the provision of the Maine Constitution relating to the passage of ordinary legislation. In the absence of any legislative history to the contrary, however, this office is reluctant to reach such a conclusion, particularly when it is remembered that under the terms of the bond issue provision, two-thirds of each House (the number of votes required to override a gubernatorial veto of ordinary legislation) must approve the bond issue in the first instance. In such a circumstance, it is difficult to conclude that the authors of the constitutional provision intended that the Governor have an opportunity to disapprove a bond issue, since the number of legislators necessary to override his veto would have already voted in favor of the issuance of the bonds by the time the authorization was presented to him.

This conclusion is bolstered by a 1970 Opinion of the Justice of the Supreme Judicial Court, interpreting a similar provision of the Maine Constitution dealing with constitutional amendments. Article X, Section 4 of the Maine Constitution provides that "The Legislature, whenever two-thirds of both Houses shall deem it necessary, may propose amendments to this Constitution . . . ." As in the case of the bond issuance provision, it is the "Legislature" which in terms is given the power to act (by two-thirds vote), and as in the case of the bond issuance provision, there is no mention of participation

by the Governor in the process. The only textual difference in the two provisions is that the constitutional amendment provision specifies that the Legislature "may propose amendments" and that when such amendments are agreed upon, "a resolution shall be passed", while the bond issuance provision specifies that such action be taken "by proper enactment." The Justices of the Supreme Judicial Court concluded that the constitutional amendment provision did not require the participation of the Governor. Opinion of the Justices, 261 A.2d 53 (Me. 1970). Thus, in order to reach a different result in the context of the bond issuance provision, one would have to read a different meaning into the words "proper enactment" from that adopted by the Justices for the word "passed". For the reasons set forth above, this Department is reluctant, in the absence of any expression of legislative intention to the contrary, to read such a different meaning into the bond issuance provision language.

In reaching this conclusion, this Department is aware that it is inconsistent with the conclusion reached in part of an Opinion of the Department issued on July 15, 1977, a copy of which is attached. At pages 2-3 of that Opinion, the Department determined that the phrase "proper enactment" did incorporate by reference the provisions of Article IV, Part Third, Section 2, and thus require the participation of the Governor in the authorization of bond issues. Since the Department now concludes that such an intention should not be ascribed to the drafters of Article IX, Section 14 in the absence of any expression thereof, it must disapprove of its Opinion of July 15, 1977 to the extent that it suggests that the Governor's participation in bond issue authorizations is constitutionally required. In light of these differing conclusions, however, the Legislature might want to consider requesting an Opinion of the Justices in the matter.

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

Sincerely,

James E. Tierney (JET)

JAMES E. TIERNEY
Attorney General

JET/ec
cc: Honorable John R. McKernan
Honorable Charles Pray, Senate President
Honorable John L. Martin, Speaker of the House
Honorable Donald V. Carter, House Chairman,
Joint Standing Committee on Appropriations
Honorable John David Kennedy, Revisor of Statutes

Governor's Veto Power: Bond Issues
Governor's Veto Power: Referendums
Me. Const. Art. IV, Pt 3rd, Sec 2
Bond Issues: Veto
Referendums: Veto
Me. Const. Art. IV, Pt 3rd, Sec 2

JOSEPH E. BRENNAN
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RICHARD S. COHEN
JOHN M. R. PATERSON
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DEPUTY ATTORNEYS GENERAL

STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

July 15, 1977

Honorable May M. Ross
Secretary of the Senate
Senate Chambers
State House
Augusta, Maine 04333

Dear Mrs. Ross:

We are responding to your letter of July 12, 1977, in which you asked two questions concerning the constitutional procedure to be used with legislation which is subject to referendum. Your questions are whether bills which have been passed by both Houses of the Legislature should be presented to the Governor for his approval or should be presented directly to the Secretary of State to be placed on a referendum ballot, when those measures are: (1) bond issue legislation passed under the provisions of Article IX, Section 14 of the Constitution of Maine; and (2) any other measure which contains a referendum clause. The answer is that the legislative measures in both cases should be presented to the Governor for his approval pursuant to Article IV, Part Third, Section 2 of the Constitution of Maine.

Your questions require consideration of Constitutional provisions which read, in pertinent part:

> "Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary, except on a question of adjournment, which shall have passed both Houses, shall be presented to the Governor . . ." Article IV, Part 3, Section 2.
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> "The Legislature shall not create any debt or debts . . . which shall singly, or in aggregate . . . exceed two million dollars, except . . . that whenever two-thirds of both Houses shall deem it necessary, by proper enactment ratified

> by a majority of the electors voting thereon at a general or special election, the Legislature may authorize the issuance of bonds on behalf of the State . . ." Article IX, Section 14. (Emphasis provided)

Article IX, Part Third, Section 19 of the Constitution would not relate to your questions except insofar as it allows the Legislature toinclude referenda provisions on legislation. The reference in that section to the Governor's veto power is not a limitation upon such power as is exercised before such legislation is sent to referendum.

The Justices of the Supreme Judicial Court have rendered an opinion which in large part answers your questions. In 1967 the Legislature passed an appropriations bill for additional expenditures of State government on condition that the legislation be ratified by the people at a referendum. The House of Representatives asked the Justices for their opinion on questions of whether such legislation had the force of law-so that it was necessary to present the act to the Governor for his consideration-and whether the Governor had the power to veto such legislation. The Justices answered these questions by giving their opinion that the presence of a referendum clause in a bill would not alter or modify the requirement of Article IV, Part Third, Section 2 of the Constitution with regard to presentation of such legislation to the Governor, and that the Governor has the power to veto bills which carry a referendum clause added at the discretion of the Legislature. The Justices concluded that if such bill was vetoed and the veto was subsequently overriden by the Legislature, the legislation would then be submitted to referendum. Opinion of the Justices, 231 A.2d 617 (Me., 1967).

The only remaining question is whether bond issue legislation, passed pursuant to the mandatory referendum provisions of Article IX, Section 14, would create an exception to the Opinion of the Justices examined above. It is our opinion that this additional factor would not cause an exception and that the rationale of the Justices would be equally applicable. Article IX, Section 14 provides that such legislation is permitted only by "proper enactment" of two-thirds of both Houses followed by ratification at referendum. The term "proper enactment" is not defined in the section. Nor is this terminology clarified by legislative or constitutional history.1/ Therefore, we

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1/ The pertinent provision of Article IX, Section 14 was added by Constitutional Amendment LXVII, pursuant to Resolves, 1949, C. 99 (H.P. 1571, L.D. 1885).

must conclude that the term "proper enactment" refers to the standard legislative process which is used for all Acts and Resolves. This legislative process must include review by the Governor pursuant to Article IV, Part Third, Section 2, since approval by the Governor, or other post-review constitutional means of enactment, are the last legislative acts which "breathe life" into an enactment. Stuart v. Chapman, 104 Me. 17 (1908). Consequently, bond issue legislation which is constitutionally required to contain a referendum clause, nevertheless must be presented to the Governor for his review and subsequent action.2/

The only apparent exception to the expressed opinion that legislation containing a referendum clause must be presented to the Governor for his review, is in the limited area of constitutional amendments. A Resolve proposing a Constitutional Amendment pursuant to the provisions of Article X, Section 4 would go directly to referendum without presentation to the Governor. Opinion of the Justices, 261 A.2d 53 (1970). It is noted by way of comparison, however, that the Constitutional provision regarding Constitutional amendments speaks in terms of a resolve being "passed" rather than being by "proper enactment."

We trust that the foregoing opinion will be helpful to you.

Sincerely,

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

JEB:mfe
cc: Governor James B. Longley
Joseph Sewall, President of the Senate
John Martin, Speaker of the House
Honorable Jerrold Speer
Honorable David G. Huber
Honorable Gerard P. Conley
Honorable Peter W. Danton
Honorable James E. Tierney
Honorable Rodney S. Quinn
Honorable Linwood E. Palmer, Jr.
Honorable William J. Garsoe

2/ It is interesting to note in this regard that the Justices of the Supreme Judicial Court have also rendered their opinion that bond issue legislation may not be started through the initiative process set forth in Article IX, Part Third, Section 18. Opinion of the Justices, 159 Me. 209 (1963).

MAY M. ROSS
SECRETARY OF THE SENATE

The Senate of Maine
Augusta

July 12, 1977

The Honorable Joseph E. Brennan
Attorney General
State House
Augusta, Maine 04333

Dear Mr. Brennan:

Article IV, Part Third, Section 19 of the Constitution of Maine reads as follows:

> "...The veto power of the Governor shall not extend to any measure approved by vote of the people, ... The Legislature may enact measures expressly conditioned upon the people's ratification by a referendum vote."

Would you please give us your opinion as to whether or not (1) bond issues enacted by the Legislature should be presented to the Governor for his approval or should be presented directly to the Secretary of State to be placed on the ballot; and (2) should any measure which is enacted by the Legislature and which is to be placed on the ballot for a referendum vote be presented to the Governor for his approval or should it be presented directly to the Secretary of State?

Thank you for your attention to these matters.

Sincerely,

May M. Ross
Secretary of the Senate