

MAINE STATE LEGISLATURE

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May 10, 1990

Senator Beverly Miner Bustin
Representative Beverly C. Daggett
Representative Daniel B. Hickey
Representative Patrick E. Paradis
Maine Legislature
State House Station #3
Augusta, ME 04333

Dear Senator Bustin and Representatives Daggett, Hickey and Paradis:

I am writing in response to your inquiry of April 27, asking whether a recent enactment of the Maine Legislature entitled "Resolve, Authorizing the Governor and the Atlantic Sea Run Salmon Commission to Enter into an Agreement with Edwards Manufacturing Company, Inc.," Resolves 1989, ch. 104, which was enacted as emergency legislation, violates Article IV, Part 3, Section 16 of the Maine Constitution which provides that emergency legislation may not include provision for the purchase of real estate. For the reasons which follow, it is the opinion of this Department that the legislative resolve does not violate the Constitution.

Article IV, Part 3, Section 16 of the Maine Constitution provides that acts of the Legislature shall not take effect until 90 days after the recess of the Legislature in which it was passed, unless the Legislature shall, by a vote of two thirds of all members elected to each House, pass a bill as emergency legislation, in which case it becomes effective on approval by the Governor. The reason for the delayed effective date is to allow the voters of the State, pursuant to Article IV, Part 3, Section 17 of the Maine Constitution, to exercise their right to veto any legislation through a referendum conducted pursuant to that section. The significance of emergency legislation, then, is to cut off the possibility of a people's veto.

Article IV, Part 3, Section 16 also provides that

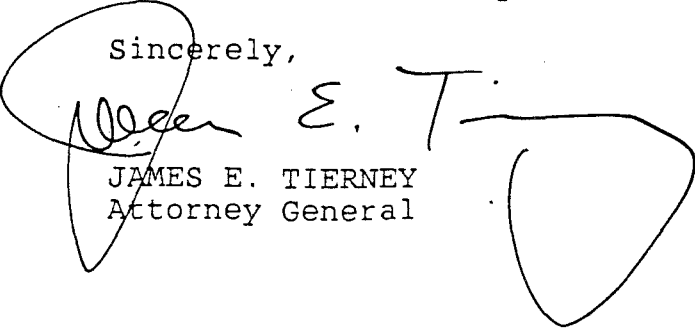
An emergency bill . . . shall not include
. . . provision for the . . . purchase . . .
of real estate.

Your question is whether the resolve at issue contained such a provision and therefore was improperly enacted as emergency legislation. The short answer to your question is that the legislation does not contain such a provision since it does not accord any new authority to any element of the Executive Branch to acquire real estate. Rather, the legislation reflects that, with respect to the Edwards Dam, that authority already exists in 12 M.R.S.A. § 6252-A(5) which authorizes the Atlantic Sea Run Salmon Commission to "acquire . . . interests in real . . . property, including . . . dams" Indeed, the eleventh clause in the preamble to the legislation expressly recognizes the existence of this authority, and states that "the purpose of this resolve is to provide legislative direction with respect to the future utilization of the Edwards Dam if the commission enters into an agreement to acquire the Edwards Dam in accordance with its existing legal authority;" Thus, the legislation cannot be viewed as containing a "provision for the sale . . . of real estate" within the meaning of the constitutional provision.

Beyond this, it is also important to note that even if the legislation were somehow viewed as violating Article IV, Part 3, Section 16, the consequence would be not its invalidity, but only the negating of its capacity to cut off the people's veto. As the Supreme Judicial Court held many years ago, the fact that a bill enacted as emergency legislation includes a provision which fits within one of the categories of prohibited emergency legislation enumerated in the constitutional provision "affects only the emergency clause and the date when the law may take effect. Instead of becoming a law immediately upon approval by the Governor, it will not take effect until ninety days after the recess of the Legislature thus becoming a non-emergency act and permitting, in the meantime, the invoking of the referendum." Lemaire v. Crockett, 116 Me. 263, 268 (1917). Thus, any executive action taken pursuant to the legislation in question after 90 days following the recess of the Legislature which passed it would not be affected by any infirmity deriving from Article IV, Part 3, Section 16.

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

Sincerely,



JAMES E. TIERNEY
Attorney General

JET:sw