

MAINE STATE LEGISLATURE

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April 9, 1991

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The Honorable John L. Martin
Speaker of the House
Maine House of Representatives
State House Station #2
Augusta, Maine 04333

Dear Speaker Martin:

I am writing in response to your letter of April 8, 1991 inquiring if legislators who are appointed to the Special Commission on Governmental Restructuring (P.L. 1991, Ch. 9, §§ S-1 and S-2) are required to take an oath as members of that Commission despite the fact that they have already taken an oath as members of the Legislature. Based on Maine constitutional requirements, I am of the opinion that any legislator appointed to the Commission is required to take the constitutional oath before discharging his/her duties on the Commission.

5 M.R.S.A. § 15193 establishes the Commission, but does not explicitly require that an oath be taken by Commission members. However, the Maine Constitution Art. IX, Sec. 1 requires that "...every person elected, appointed, or commissioned to any judicial, executive, military or other office under this State shall, before he enter on the discharge of the duties of his place or office, take and subscribe the following oath or affirmation..." Thus, if the members of the Commission are appointed to an "office under this State" then they are required to take an oath of office.^{1/}

^{1/} The oath of office shall state that the individual will faithfully discharge his/her duties in accordance with the constitution and the laws of the State (Me.Const. Art. IX, § 1). The oath shall be taken before a dedimus justice in accordance with 5 M.R.S.A. § 5 and the public officer certified in accordance with 5 M.R.S.A. § 6.

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The Special Commission on Governmental Restructuring is established as an "independent advisory board" under 5 M.R.S.A. § 12004-J, sub-§ 9. The statute states that the independent advisory boards are boards which are established by law as independent organizations. The Special Commission is an independent Commission established to advise, consult and assist the executive and legislative branches of State government. (5 M.R.S.A. § 15193). Members are appointed to the Commission by the Governor, the President of the Senate and the Speaker of the House. The statute explicitly provides that no member of the Commission may be an employee or retained by the executive branch of State government.

In an 1822 Opinion of the Justices, the Court determined that the term "office" implies a delegation of a portion of the sovereign power to, and possession of it by, the person filling the office. The Court concluded it was highly proper that this delegation should be guarded from abuse and to this end, every person should be under the obligation of the oath. (Opinion of the Justices, 3 Me. 481, 482 (1882)). Applying this standard to the Special Commission, the Commission is an independent board established to advise the executive and legislative branches regarding governmental restructuring. Members are appointed to this independent office to fulfill a statutory responsibility separate from any other duties or responsibilities they may have under other provisions of the Constitution or Maine laws. All members of the Commission are required to take an oath that he/she will faithfully discharge the duties of this office. (See also, Op. Atty. Gen., Feb. 10, 1967).

If a legislator is appointed to the Commission, that legislator is required by the Constitution to take an oath before discharging his or her duties as a member of this Commission.

Sincerely,


MICHAEL E. CARPENTER
Attorney General

VVV/dab