

MAINE STATE LEGISLATURE

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May 11, 1993

Representative William Lemke
Maine House of Representatives
State House Station #2
Augusta, ME 04333

Dear Representative Lemke:

I am writing in response to your request of May 10, 1993, concerning the constitutionality of Legislative Document No. 1350, "AN ACT to Provide for the Recall of the Governor, State Senators and State Representatives." For the reasons which follow, it is the Opinion of this Department that this proposed legislation would violate the Maine Constitution in that it seeks to establish by statute a mechanism for the removal of certain State officials which can only be accomplished by amendment to the Maine Constitution.

Legislative Document No. 1350 seeks to establish a mechanism whereby a certain number of qualified voters may sign a petition addressed to the Secretary of State for the recall of the Governor, a State Senator, or a State Representative, and directs the Secretary of State to call an appropriate special recall election. Although the text of the proposed legislation does not state as much, this Department assumes that if a majority of voters in the appropriate district voted to recall the official, the official would no longer hold office, and a new election would be called to fill the vacancy as provided by law. The question which you pose is whether this legislation would be effective, or whether the mechanism could only be implemented if it is part of the Maine Constitution.

In the Opinion of this Department, a constitutional amendment would be required. The issue is in some respects similar to that recently addressed by the Justices of the Supreme Judicial Court, in an Opinion responding to questions propounded to them by the Maine House of Representatives concerning the constitutionality of imposing statutory limits on the number of terms which members of the Maine Legislature may serve. In that Opinion, a majority of the

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Justices advised that the Legislature (or the electorate through the medium of initiated legislation) could impose term limits on the members of the Legislature since such a statute was not prohibited "either in express terms or by necessary implication" by the Maine Constitution. Opinion of the Justices, No. OJ-93-1, slip. op. at 3 (Me. April 26, 1993), quoting Baxter v. Waterville Sewer District, 146 Me. 211, 215 (1951). In the term limits Opinion, the Justices found that since the Maine Constitution did not address the question as to how many terms a member of the Maine Legislature may serve, the matter was open to regulation by ordinary legislation.

The question raised by your inquiry, therefore, becomes whether the Maine Constitution has addressed the question of the removal of the Governor and members of the Maine Legislature. In this case, the Constitution does speak to the issue in several respects. First, the Constitution provides that the officials in question "shall hold . . . office" for a fixed term of years, Me. Const. art. V, § 2 (Governor, 4 years); art. IV, pt. 1, § 2 (House of Representatives, 2 years); art. IV, pt. 2, § 1 (Senate, 2 years). In addition, the Constitution also provides for the removal of the Governor, as the holder of a "civil office under this State," by the Legislature through the mechanism of impeachment, Me. Const. art. IX, § 5, and by the Supreme Judicial Court in the case of a prolonged mental or physical disability, Me. Const. art. V, pt. 1, § 14. In the words of the Justices of the Supreme Judicial Court:

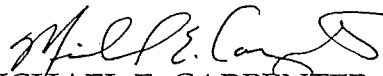
When the Constitution fixes the tenure of a civil office, it is beyond the power of the Legislature to affect the tenure. Persons holding such constitutional office, therefore, may be removed only by methods authorized by the Constitution itself.

Opinion of the Justices, 343 A.2d 1961, 203 (1975) (citations omitted). The Constitution makes no provision for the removal of members of the Legislature, once elected. Nonetheless, in the view of this Department, the fact that the Constitution provides that these officers "shall hold their office" for two years, necessarily implies that they may not be removed, unless the Constitution otherwise so provides. Consequently, this Department concludes that in order for either the Governor or the members of the Maine Senate or House or Representatives to be removed from office by recall, provision for such removal would have to be made in the Maine Constitution.¹

¹It is significant in this regard that shortly after the adoption of the so-called "Progressive" amendments to the Maine Constitution (providing for the direct initiation of legislation by the people and the veto by the people of legislation enacted by the Legislature), Me. Const. art. IV, pt. 3, §§ 16-20, by the Legislature and

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

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC:sw

cc: Sen. Georgette R. Berube
Representative Ruth Joseph
Chairs, Joint Standing Committee on
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the electorate in 1907 and 1908, two efforts were made to add the other major element of the Progressive agenda--the recall of public officers--to Maine law. In each case, the effort failed, but the proposals were framed in terms of amendments to the Maine Constitution. Legis. Rec. (1911) 661 (bill reported "ought not to pass"); Legis. Rec. (1913) 1199, 1201 (bill referred to next Legislature).