

MAINE STATE LEGISLATURE

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January 3, 1994

Hon. William Lemke
House of Representatives
State House Station 2
Augusta, ME 04333

Dear Representative Lemke:

You have inquired of this office whether the position of Speaker of the House of Representatives carries with it a status such that removal of a Speaker or election of a replacement Speaker would require more than a majority vote of the membership of the House. For the reasons which follow, it is the opinion of this Department that the Speaker may be removed and replaced by majority vote of the House.

Article IV, Part First, Section 7 of the Maine Constitution provides simply that "The House of Representatives shall choose their speaker, clerk, and other officers. " The provision does not specify a fixed term of office such as, for example, is provided for the Office of Governor ("the Governor . . . shall hold the office for four years . . .", Me. Const. art. V, pt. 1, §2), nor does it specify that the election of the Speaker shall occur at any particular time, such as is the case for the so-called "constitutional officers". ("The Secretary of State shall be chosen biennially . . .," Me. Const. art. V, pt.2, §1; see also art. V, pt. 3, §1 (Treasurer); art. IX, §11 (Attorney General)). It thus appears that, on its face, the provision of the Maine Constitution providing for the choosing of the Speaker neither specifies a fixed term during which the holder of that position may hold office, nor does it specify a particular time at which the Speaker is to be chosen. In consequence, the Constitution does not fix the tenure of the Speakers's office, and the Speaker must be viewed as serving at the pleasure of the House of Representatives, and therefore may be removed and replaced at any time by a majority of the House or Representatives. If this were not the case, it would mean that the Clerk and the Assistant Clerk of the House also could not be removed except by impeachment.

This conclusion is not altered by the terms of the Maine Constitution relating to the procedure for impeachment or address by the Legislature. Article IX, Section 5 of the Constitution provides:

Removal by impeachment or address. Every person holding any civil office under this State may be removed by impeachment for misdemeanor in office; and every person holding any office, may be removed by the Governor on the address of both branches of the Legislature. But before such address shall pass either House, the causes of removal shall be stated and entered on the journal the House in which it originated and a copy thereof served on the person in office, that the person may be admitted to a hearing, and that person's own defense.

With regard to impeachment, the Constitution further provides that the "House of Representatives shall have the sole power of impeachment," Me. Const. art. IV, pt. 1, §8, and that the Senate

... shall have the sole power to try all impeachments, and when sitting for that purpose shall be on oath or affirmation, and no person shall be convicted without the concurrence of 2/3 of the members present. ...

Me. Const. art. IV, pt. 2, §7.

The issue presented by these provisions is whether the office of Speaker of the House may be considered a "civil office", for purposes of Article IX, Section 5, thus according the incumbent the protection of the impeachment process, or may be considered "any office", for purposes of the address procedure. There are no judicial decisions that speak to this issue. Moreover, review by this Department of the history of the enactment of these provisions at the Maine Constitutional Convention in 1819 does not reveal the intention of the framers on this point. Debates and Journal of the Constitutional Convention of the State of Maine (1819-1820) 202, 293 (1894). Nor does research disclose that the issue has ever arisen in any other jurisdiction, most of which have similar provisions in their constitutions. Upon review of the applicable provisions, this Department does not believe that Article IX, Section 5 of the Maine Constitution can be read to apply to the office of Speaker of the House.


The reason for this is that it would have been historically inconsistent for the framers of the Maine Constitution to have involved other constitutional institutions of the State, such as the Senate and the Governor, in the removal of the officers of the House. The form of government of the State of Maine, like that of the

Commonwealth of Massachusetts from which it was severed in 1820, derives from prior British practice, in which legislative power was wielded by two co-equal bodies, the House of Commons and the House of Lords, one of which was chosen by election and the other by heredity, and the King or Queen, also chosen by heredity. Blackstone, Commentaries on the Laws of England, I, 149 (U. Chi. 1979). Each of these constitutional institutions enjoyed certain checks upon the powers of the others, one of which was the power of impeachment and punishment, which was exercised by the two houses jointly against the executive power. Id. at I, 150-51. Impeachment was not, however, a power exercised by one house against the other, or by one house and the King or Queen against the other. Thus, it would have been wholly foreign to British practice for the House of Lords or the King to have been formally involved in the removal of an officer of the House of Commons.

For the same reason, we see no basis for concluding that the framers of the Maine Constitution desired to involve either the Senate or the Governor in the process of removing or replacing the Speaker of the House. Thus, this Department would not interpret the terms "civil office" or "any office" in Article IX, Section 5 of the Maine Constitution to include officers of the Legislature. Consequently, the House may remove the Speaker at any time by majority vote.

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

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC/bls

cc: Hon. John L. Martin
Hon. Dennis L. Dutremble