

MAINE STATE LEGISLATURE

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ANDREW KETTERER
ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

Telephone: (207) 626-8800
FAX: (207) 287-3145
TDD: (207) 626-8865

REGIONAL OFFICES:

84 HARLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

59 PREBLE STREET
PORTLAND, MAINE 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259

February 26, 1997

Senator Vinton E. Cassidy
Maine State Senate
3 State House Station
Augusta, ME 04333-0003

Dear Senator Cassidy:

I am writing in response to your inquiry to this office concerning whether the Maine Legislature may enact amendments to the laws governing forest practices during the period in which a competing measure on that general subject enacted by the Legislature as an alternative to initiated legislation is pending before the voters of the State. For the reasons which follow, it is the Opinion of this office that the Legislature may not, during this period, enact legislation which is inconsistent with the competing measure.

Your question has its origin in initiated legislation that was presented to the Second Regular Session of the 117th Legislature, pursuant to Article IV, Part Third, Section 18 of the Maine Constitution. That legislation was printed as Initiated Bill 4, Legislative Document 1819, "An Act to Promote Forest Rehabilitation and Eliminate Clearcutting." In response to this citizen initiative, the Legislature, at a Special Session held in September of 1996, acting pursuant to Article IV, Part Third, Section 18, Subsection 2 of the Maine Constitution, passed a "competing measure" for consideration by the voters as an alternative to the initiated legislation at the general election held on November 5, 1996. Competing Measure Resolutions 1995, ch. 1.

At the 1996 general election, the competing measure received more than one-third but less than a majority of all of the votes cast. Thus, pursuant to the provisions of Article IV, Part Third, Section 18, Subsection 2 of the Maine Constitution, the competing measure will be resubmitted to the voters at the next statewide election, which will be held on November 4, 1997, unless the Legislature elects to call a special election for this purpose sooner, pursuant to the same

constitutional provision.


Your question is whether, during the pendency of the referendum on the competing measure, the Legislature may enact legislation which deals with the same subject matter as the competing measure. While the Maine Constitution does not in terms address this question directly, the Supreme Judicial Court has had occasion to do so in a closely related circumstance. In 1948, the Court was presented with a question of whether the Legislature could enact a measure dealing with the same subject matter as an initiated measure which was then pending before the voters. The Court held that if the Legislature enacted "[a] bill which deals broadly with the same general subject matter as [the initiated measure], particularly if it deals with it in a manner inconsistent with the initiated measure so that the two cannot stand together," the legislative enactment could not take effect, but must be considered a "competing measure" and sent to the electorate as an alternative to the initiated bill. Farris ex rel. Dorsky v. Goss, 143 Me. 227, 232 (1948). The problem presented by your question is whether this result would apply in the situation in which it is a competing measure, and not an initiated measure, which is being submitted to the voters.

In the view of this Department, it is likely that the Court would apply the rule in Farris to this situation. The policy underlying the Court's decision in Farris was that the interest of the initiators in having their legislation presented to the voters should not be subverted by the enactment of a measure by the Legislature which might divert votes from the initiative but which would not be submitted to the voters itself for their approval. It might be argued that this policy is not threatened when it is not the initiated legislation, but the Legislature's own competing measure which is before the voters. It is still the case, however, that the referendum on the competing measure is occurring as a result of the successful invocation of the initiative process. Thus, even though the initiators' bill has been defeated, the Constitution requires that the voters have an opportunity to vote on the measure which has survived, to determine if it alone can command a majority of the votes. That being the case, the same policy enunciated in Farris would apply, meaning that the presence of inconsistent legislation would not be allowed to subvert the process.

The only question remaining, therefore, is whether any particular statute which the Legislature might be contemplating enacting would, in fact, be inconsistent with the competing measure. This determination must await the development of such legislation.

I hope the foregoing answers your question.

Sincerely,

A handwritten signature in cursive script that reads "Andrew Ketterer".

ANDREW KETTERER
Attorney General

CH:sw

cc: Governor Angus S. King, Jr.
Senate President Mark W. Lawrence
House Speaker Elizabeth H. Mitchell