

MAINE STATE LEGISLATURE

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ANDREW KETTERER
ATTORNEY GENERAL

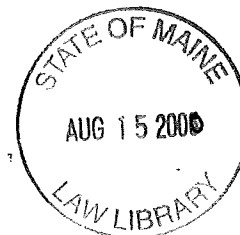
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June 4, 1999

Honorable Joseph W. Mayo
Clerk, Maine House of Representatives
2 State House Station
Augusta, Maine 04333-0002

COPY



Dear Clerk Mayo:

This will respond to your letter dated April 9, 1999 requesting an opinion from this office on two separate provisions of the Maine Constitution. We will respond to your request in the order in which you have presented your inquiries.

Your first question relates to the language of Article V, Pt. I, Section 8 of the Maine Constitution which deals with the Governor's power to nominate officers, subject to confirmation. Paragraph 2 of section 8 of Article 5, Pt. I provides in relevant part as follows:

"The procedure for confirmation shall be as follows: an appropriate legislative committee comprised of members of both houses in reasonable proportion to their membership as provided by law shall recommend confirmation or denial by majority vote of committee members present and voting."

You have specifically asked whether the phrase "as provided by law" modifies the language "an appropriate legislative committee" or the language "of members of both houses in reasonable proportion to their membership," or whether that phrase was intended to modify all of the language preceding it.

It is the view of this office that the phrase "as provided by law" modifies all of the language preceding it, namely, "an appropriate legislative committee comprised of both houses in reasonable proportion to their membership as provided by law."

If a provision of law designates the appropriate legislative committee which is to review a Gubernatorial nominee, that provision of law controls. Similarly, various provisions of Maine law deal with the number of Senators and Representatives to be elected and, therefore, provide for the proportion of the members of both houses to sit on the appropriate legislative committee.

The Constitution expressly provides that the committee recommendation of confirmation or denial can only be overridden by a vote of 2/3 of the members of the Senate present and voting. Moreover, the Constitution requires that any statutes enacted to carry out the purposes of the confirmation process must have the affirmative vote of 2/3 of the members of each House present and voting. Reference to a committee by the Legislature is not enacting a statute and, thus, would only require a simple majority

Your second question relates to the provisions of Article IV, Part Third, Section 1 of the Maine Constitution which deals with the convening of the Legislature and what matters may be considered by the Legislature during its First and Second Regular Sessions. Section 1 of Article IV, Part Third then provides that:

"The Legislature shall enact appropriate statutory limits on the length of the first regular session and the second regular session."

You have specifically asked whether this Constitutional provision binds the current Legislature to the provisions of 3 M. R. S. A. section 2 which requires the adjournment of the first regular session of the Legislature no later than the 3rd Wednesday in June and the adjournment of the second regular session of the Legislature no later than the 3rd Wednesday in April. The law also allows the Legislature, in the case of an emergency and by a vote of 2/3 of the members of each

House present and voting to extend the date of adjournment twice for no more than 5 additional legislative days for each extension.

You have also made reference to the Opinion of the Justices, OJ-96-2 Dated April 3, 1996 indicating that no statutory enactment passed by one Legislature can bind a subsequent Legislature and that "subsequent sessions of the Legislature may choose to follow it, or they may choose to repeal it, either expressly or by implication."

In light of this, you have asked whether the Legislature could extend the adjournment deadlines by majority vote, notwithstanding the express language of 3 M.R. S. A. section 2.

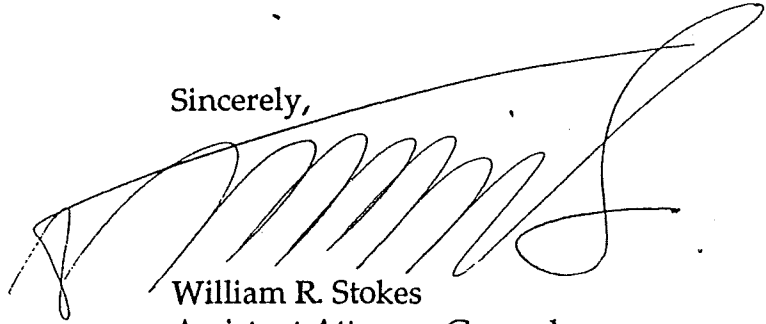
It is, of course, true that the Legislature could alter, amend or repeal the time limits contained in 3 M.R. S. A. section 2 either expressly or by implication. Normally, such legislative action of amending or repealing a statute would not take effect until 90 days after the recess of the session of the Legislature in which it was passed, unless in case of an emergency passed by a vote of 2/3 of all members elected to each House. See Article IV, Part 3, section 16.

The constitutional provision providing that Acts of the Legislature do not become effective until 90 days after the recess of the Legislature which passed it (except for emergency legislation) contains its own exception for "such orders or resolutions as pertain solely to facilitating the performance of the business of the Legislature, either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law."

Since an order or resolution by a majority of the Legislature that it should remain in session beyond the statutory timeframe set forth in 3 M.R. S. A. section 2 would be such as pertained "solely to facilitating the performance of the business of the Legislature,...." it is the view of this office that the Legislature could extend the legislative session by majority vote and, in essence, repeal or alter the statutory time limits of 3 M.R. S. A. section 2.

We hope this responds to your inquiries. Please let us know if we can be of further assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. R. Stokes', written in a cursive style. The signature is positioned above the typed name and title.

William R. Stokes
Assistant Attorney General

State of Maine
House of Representatives

Augusta 04333-0002
287-1400

RECEIVED

APR 09 1999

ATTORNEY GENERAL



Joseph W. Mayo
Clerk of the House

April 9, 1999

Honorable Andrew Ketterer
6 State House Station
Augusta, Maine 04950

Dear Attorney General Ketterer:

I request an opinion of your office relative to Article V, Part I, Sec. 8, Paragraph 2 of the Maine Constitution. Do you read the clause "as provided by law" to modify the clause "an appropriate legislative Committee" or to modify the clause "of members of both houses in reasonable proportion to their membership" or does it modify both clauses?

Secondly, relative to the provisions of Article IV, Part Third, Section 1 which provides that: "The Legislature shall enact appropriate statutory limits on the length of the first regular session and of the second regular session." Does this provision bind the current Legislature to the provisions of 3 MRSA ¶ 2 which provides for an extension of the legislative session by a 2/3 vote? Specifically does the opinion of the Supreme Judicial Court as in OJ-96-2 page 2 which states: "subsequent sessions of the Legislature may choose to follow it or they may repeal it either expressly or by implication" mean that the Legislature could extend by majority vote?

Sincerely yours,

A handwritten signature in cursive script that reads "Joseph W. Mayo".

Joseph W. Mayo
Clerk, Maine House of Representatives