

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
TDD: (207) 626-8865

REGIONAL OFFICES:

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

44 OAK STREET, 4TH FLOOR
PORTLAND, MAINE 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259
TDD: (877) 428-8800

November 14, 2000

The Honorable Michael H. Michaud
111 Main Street
East Millinocket, Maine 04430

Dear Senator Michaud:

This will respond to your oral request for an opinion from this Office inquiring as to whether it is constitutionally permissible for the Maine Senate to elect co-Presidents of the Senate. In other words, you have asked whether two individuals could simultaneously serve as Presidents of the Senate and somehow share that office. For the reasons which follow, it is the opinion of this Office that the election of co-Presidents of the Senate is not allowed under Maine's Constitution.

Article IV, Part II, § 8 of the Maine Constitution provides that "[t]he Senate shall choose their President, Secretary and other officers." Thus, the Constitution itself contemplates that the Senate will select certain officers including a President and Secretary. Moreover, the literal language of the Constitution, as well as common sense, would seem to suggest that the Constitution contemplates that the office of President of the Senate be occupied by one person at a time.

The actual duties and responsibilities of the President of the Senate are not described in detail in the Constitution itself. The Constitution only describes a few limited duties the President of the Senate is either authorized or required to perform. Among these is the authority, with the Speaker of the House, to call the Legislature into session under certain circumstances. See Article IV, Part 3, § 1. Article V, Part 1, § 14 provides that "[w]henver the office of Governor shall become vacant because of the death, resignation or removal of a Governor in office, or any other cause, the President of the Senate shall assume the office of Governor until another Governor shall be duly qualified." Similarly, "[w]henver the Governor is unable to discharge the powers and duties of that office because of mental or physical disability, the President of the Senate

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... shall exercise the powers and duties of the office of Governor until the Governor is again able to discharge the powers and duties of that office ..." Article V, Part 1, § 15, Me. Const.

Given the nature of the responsibilities imposed by the Constitution on the President of the Senate, particularly the fact that the President of the Senate is first in the line of succession to the office of Governor, it would appear to be self-evident that the Constitution only permits one President of the Senate at a time. This is precisely what the Justices of the Supreme Judicial Court of Maine held in 1830. In *Opinion of the Justices*, 6 Me. 506 (Greenleaf 434) (1830), Chief Justice Mellon expressed the following opinion:

There cannot be *two Presidents of the Senate* at the same time, when there is only *one Senate* in existence. ...

Unless this construction is adopted, there may be confusion in the administration of government; for if there may be, consistently with the constitution, *two Presidents of the Senate* at the same time, to whom shall the language of the article and section before cited apply? *Both Presidents* are not intended; the provision contemplates but *one* as in existence. A construction of the constitution leading to such consequences, and involving such inconsistencies, I cannot consider as legitimate and correct, or as ever contemplated by those who framed the constitution.

6 Me. at 508 (Greenleaf at 436) (emphasis in original). For your convenience, I have enclosed a copy of the *Opinion of the Justices* which was issued in 1830.

I hope this information was helpful to you. Please feel free to call upon me if I can be of further assistance.

Sincerely,



ANDREW KETTERER
Attorney General

AK:WRS:mhs
Enclosure

the power to waive that right and vote not to choose a representative, and such vote would not bind the minority in such town. And, —

2d. Towns and plantations classed into districts for the purpose of choosing a representative have a right to send a representative, notwithstanding a majority of the towns and plantations have voted not to send one.

WILLIAM PITT PREBLE,

January 31st, 1826.

Nota. The house of representatives, in the case which occasioned the call for the foregoing opinions, acted in conformity with that of Mr. Justice Preble.

Opinion of the Justices,
6 Me. 506 (Greenleaf 434) (1830)

[* 506]

* NO. II.

EXECUTIVE DEPARTMENT, January 23d, 1830.

To the Honorable Justices of the Supreme Judicial Court of the State of Maine.

GENTLEMEN: — In conformity to the third section of the sixth article of the constitution of said State, I request your opinion upon the following questions arising upon the construction of said constitution, they being questions which may be important to have settled by the highest authority: —

Do the executive duties of the State, when constitutionally exercised by the president of the senate, devolve at the end of the political year, when so exercised, on the president of the senate, or speaker of the house of representatives of the next political year, whichever shall be first chosen? or shall such executive duties still continue to be exercised by such president of the senate, until another governor of the State chosen by the people or by the legislature be qualified?

NATHAN CUTLER,

President of the Senate of 1829, and acting Governor.

MONDAY, January 25th, 1830.

At a meeting of the members of the executive council, in the council chamber. Present: Messrs. Simeon Stetson, Phinehas Varnum, David Crowel, Jonathan G. Hunton, Levi Hubbard.

Hon. Simeon Stetson was chosen president.

The following resolution was unanimously adopted, and the

secretary of state ordered to transmit a copy of the same to each of the justices of the supreme judicial court:—

Resolved, That the justices of the supreme judicial court be and hereby are required, in conformity to the third section of the sixth article of the constitution of the State, to give their opinion, as soon as convenient, upon the following questions, arising upon the * construction of said constitution, which have become important in administering the government [* 507] and in the discharge of official duty in this department thereof:—

When the office of governor has become vacant, and the exercise of the powers and duties of that office have devolved upon, and have been exercised by, the president of the senate until the first Wednesday in January, terminating a political year, and until another president of the senate has been chosen and has taken upon himself that office, can the office of governor be further exercised, according to the provisions of the constitution, by such first-named president of the senate, or ought said office of governor to be then exercised by said last-named president of the senate while he holds that station, and until another governor is duly qualified?

J. G. HUNTON,
SIMEON STETSON,
PHINEHAS VARNUM,
DAVID CROWEL,
LEVI HUBBARD.

CAMBRIDGE, January 30th, 1830.

To the Honorable Council of the State of Maine.

LAST evening, on my arrival in this town, I received from the secretary of state a copy of your order or resolve of the 25th inst., requiring the opinion of the justices of the supreme judicial court on certain questions stated in said order. As the secretary was directed to furnish *each* of said justices with a copy of the same, it may at least be inferred that the council did not expect that a *personal* interview and consultation should be had by the members of the court, distant as they now are from each other. On this presumption, and to avoid delay, I have concluded to state to the honorable council the opinion I have formed upon the questions submitted, and to give notice of my having so done to my brethren, without loss of time, requesting them, if they think proper, to adopt a similar mode of proceeding.

1. The constitution provides that the senate shall choose their president; and he is always one of the senators.

2. A senator, as well as a representative, is elected [* 508] "for one *year from the day next preceding the last annual meeting of the legislature."

3. A senator, of course, when such year has expired, loses *that character* on which the office of president of the senate depends as its necessary foundation; hence both offices by lapse of time expire at the same moment, unless that of *president of the senate* is otherwise terminated during the continuance of the *office of senator*.

4. When a new *president of the senate* is elected and has entered on the duties of his office, after the expiration of the year or term for which the next preceding president was elected, such election must be considered as having been made, *because* no president was then in office.

5. There cannot be *two presidents of the senate* at the same time, when there is only *one senate* in existence.

6. The 14th section of the 2d article of the constitution provides that "whenever the office of governor shall become vacant by death, resignation, removal from office, or otherwise, *the president of the senate* shall exercise the office of governor until another governor shall be duly qualified." This office he is to exercise *because he is* president of the senate, and in virtue of his character *as such officer* at the time of such exercise of the office, and not because *he had been* president during the year next preceding.

7. Unless this construction is adopted, there may be confusion in the administration of government; for if there may be, consistently with the constitution, *two presidents of the senate* at the same time, to whom shall the language of the article and section before cited apply? *Both presidents* are not intended; the provision contemplates but *one* as in existence. A construction of the constitution leading to such consequences, and involving such inconsistencies, I cannot consider as legitimate and correct, or as ever contemplated by those who framed the constitution.

In compliance with the order of the honorable council, I give it as my decided opinion, that "when the office of governor has become vacant, and the powers and duties of that office have devolved upon, and been exercised by, the president of the senate, until the first Wednesday in January, terminating a political year, and until another president of the senate has been chosen and has taken upon himself that office," the office of governor [* 509] cannot be *further* exercised, *according to the provisions of the constitution, by such *first-named* president of the senate; but said office of governor ought to be *then* exercised by the said *last-named* president of the senate while he holds that station, and until another governor shall have been

duly qualified. The council, in answer to the petitioned order or resolution, is of the opinion that the

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To the Hon. Nath

THE undersigned, being called upon by the honorable council, in answer to the petitioned order or resolution, is of the opinion that the

him as one of the, ultimo, by the said acting governor," resolve of that date most of the reason to the questions proposed, it is unnecessary to much as the question a portion of the established principle of a statute as may be in view; and the meaning of such necessary to consider and meaning of. So in the construction as a paramount binding upon all subject to the power applied. The words, "the president of the senate shall exercise the office of governor until another governor shall be duly qualified," may violence to the for the time being office of president should, during still continuing considered as president of the curred, and entered the existence.

duly qualified. This opinion is respectfully submitted to the council, in answer to the questions proposed in the before-mentioned order or resolve, by

PRENTISS MELLEN, *Chief Justice of the
Supreme Judicial Court of the State of Maine.*

*To the Hon. Nathan Cutler, and the Honorable Council of the
State of Maine.*

THE undersigned, having considered the questions propounded to him as one of the justices of the supreme judicial court, on the 23d ultimo, by the said Cutler, as "president of the senate of 1829, and acting governor," and on the 25th ultimo by the council, by their resolve of that date, replies, that he concurs with the chief justice in most of the reasons by him given in his answer of the 30th ultimo, to the questions propounded by the council as aforesaid, and which it is unnecessary here to recapitulate; but would add, that, inasmuch as the question itself implies doubt as to the construction of a portion of the constitution, it may be useful to recur to the legal rules of construction applicable in such cases. It is a well-established principle of law, that such construction ought to be put upon a statute as may best answer the intention which the makers had in view; and that, whenever any words are doubtful, the intention of the legislature is to be resorted to in order to find the meaning of such words. To ascertain this intention, it is often necessary to consider the other parts of the statute, for the words and meaning of one part frequently lead to the sense of the other. So in the construction of the constitution, which may be considered as a paramount statute passed immediately by the people, binding upon all the departments of the government, and not subject to the power of either, the same rule of construction may be applied. The meaning of the paragraph in the fourteenth section of the first part of the fifth article of the constitution, in these words, "the president of the senate shall exercise the office of governor *until another governor shall be duly [* 510.] qualified," may be considered doubtful. It is doing no violence to the language to consider it as referring to the officer for the time being; so that whoever should be invested with the office of president of the senate, at any time during the vacancy, should, during the time of his holding such office, the vacancy still continuing, exercise the office of governor; or it may be considered as applying to the individual holding the office of president of the senate at the time the vacancy of governor occurred, and entitling him to exercise the office of governor during the existence of the vacancy, even beyond the political year in

which it occurred. The language being susceptible of different constructions, the inquiry is, Which will best comport with the other parts of the instrument and the spirit of the whole? It was manifestly the intention of the framers of the constitution that the people should be *annually* reinvested with all the powers by them intrusted to the executive and legislative departments of the government, and that the authority to execute these powers should be *annually* derived from the people. It is, therefore, provided that the governor shall hold his office *one year* from the first Wednesday of January in each year, and that the senators and representatives shall be elected for *one year* only. Suppose that subsequent to the election of a governor, but previous to taking the requisite oaths, the governor elect should die, (as was the case in Massachusetts during our connection with that Commonwealth,) or should decline accepting, the office of governor the preceding year having been vacant and exercised by the president of the senate; I am not aware that the constitution has provided any mode by which such vacancy can be filled by election, either by the people or the legislature. The office must then remain vacant during the year; and if it would be doing no violence to the language of the constitution to say, that the president of the senate of the preceding year should still continue to exercise the office of governor for the current year, and so from year to year, "until another governor shall be duly qualified," it certainly would not comport with the spirit of that portion of the instrument which provides for an *annual* executive; and it does not seem to me that those who framed and those who ratified that instrument could ever have intended that such a result should by possibility occur. Other cases might be put which

[* 511] * would be equally illustrative of the effects of such a construction. It surely would not be contended that the governor of the preceding year should hold over, in case the governor elect should decline accepting or die before taking the oaths, or in case the office of governor should not be filled in the manner pointed out by the constitution by reason of any other casualty, because that instrument has most manifestly provided otherwise. But if those who framed it had intended that the president of the preceding senate, exercising the office of governor, should hold over in case of a vacancy of governor the succeeding year, would they not have provided also that the governor for the preceding year, holding his office to the end of the political year, should hold over, in case of vacancy the succeeding year? What reason could be given for authorizing the president of the senate, exercising the office of governor, to hold over, and not authorizing the governor himself to hold over, under circumstances precisely similar? Every argument arising from the inconvenience of

withdrawing the proper duties at the in case no president the new legislature as in the other; and was never intended either case. By what shall exercise senate *for the time* difficulties above are obviated; the is predicated are contingency, will exercised by an whether that office senate, or speaker

It is manifest bear a strict, literal of the governor. In many cases, a number of days January of the preceding struing the phrase a construction could to include the oath of qualification the members elected the case of count Wednesday of January the governor for could be given a year to assist in bers of the legislature, those sent to supply vacancy of a new count election, manifest ninth article of construction was of the constitution a quorum of the ernor to remain but there never any kind, by preceding the under a new

withdrawing the president of the existing senate from his appropriate duties at that board, or from the apprehensions of anarchy in case no presiding officers should be elected in either branch of the new legislature, would apply with equal force in the one case as in the other; and to my mind the inference is strong that it was never intended that there should be any holding over in either case. By construing the words "the president of the senate shall exercise the office," &c., to mean the president of the senate *for the time being*, no violence is done to the language; the difficulties above suggested, and others that might be enumerated, are obviated; the principles upon which the executive department is predicated are preserved; and the executive power, in every contingency, will then annually revert to the people, and will be exercised by an officer holding his place under a new election, whether that officer be denominated governor, president of the senate, or speaker of the house.

It is manifest that some clauses in the constitution will not bear a strict, literal construction; for instance, the term of office of the governor is one year from the first Wednesday of January. In many cases, that period would have been fully completed a number of days previous to the first Wednesday of January of the succeeding * year; and, unless by con- [* 512] struing the phraseology to mean a political year, such a construction could be given as would extend the term of office to include the first Wednesday of the succeeding January, the oath of qualification could not be administered by the governor to the members elect of the two branches of the legislature. So in the case of councillors who are to be chosen annually, on the first Wednesday of January, if practicable, for the purpose of advising the governor for that political year. Unless such a construction could be given as would authorize the councillors of the preceding year to assist in administering the oath of qualification to members of the legislature subsequent to the first Wednesday of January, those senators who should be elected by the two branches to supply vacancies could not be qualified until after the election of a new council, and, of course, could have no voice in such election, manifestly against the spirit of the fourth section of the ninth article of the constitution. Under a belief that such a construction was warranted by the obvious intention of the framers of the constitution, as indicated in other parts of that instrument, a quorum of the old council were uniformly requested by the governor to remain, until a quorum of the new could be qualified; but there never was any attempt to transact executive business of any kind, by either governor or council, subsequent to the day preceding the first Wednesday of January, until a qualification under a new election; all business of every kind being suspended,

except merely to administer the qualifying oaths to the members of the legislature. So in case of vacancy in the office of governor, the president of the senate the preceding political year, whose term of service as senator expires with the year, must, from necessity, act as governor, and the council of the preceding year continue to act as such, under the like necessity as above stated, in qualifying the new legislature; but the *necessity* ceases upon the election of a president of the new senate, an officer then being in the full exercise of the office upon which, according to the provision of the constitution, the duties of governor devolve in case of vacancy.

Upon every view of this subject which I have been able to take, my mind has come irresistibly to the conclusion that the executive duties of the State, when constitutionally exercised by the president of the senate, devolve, at the end of the [* 513] political year when so exercised, * on the president of the senate of the next political year, the office of governor for that year being vacant.

ALBION K. PARRIS,
Just. Sup. Jud. Court.

PORTLAND, February 4th, 1830.

AUGUSTA, February 3d, 1830.

To the Honorable the Executive Council of the State of Maine.

GENTLEMEN:— After the receipt of your communication of the 25th ultimo, with which I had the honor to be furnished by the secretary of state, the members of the court proceeded to ascertain each other's views by letter, not being able, from their scattered situation, to have a personal interview. My brethren are of opinion, as you are doubtless advised, that the right of the late president of the senate to exercise the executive duties terminated upon the election of a president for the current year. A majority of the court having thus decided a question of great political importance, although I have not been able to bring myself to concur with them, I have not deemed it expedient to express a formal dissent, and to give in detail my reasons therefor, especially as questions propounded in this manner are necessarily decided without argument, and we have not been able to meet for discussion among ourselves.

I have the honor to be,

Very respectfully,

Your obedient servant,

NATHAN WESTON, JUN.

To the Honoi

GENTLEMEN:—
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