

MAINE STATE LEGISLATURE

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G. STEVEN ROWE
ATTORNEY GENERAL



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

REGIONAL OFFICES:

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

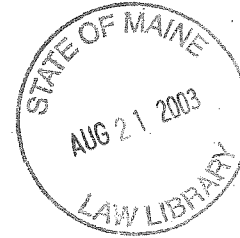
44 OAK STREET, 4TH FLOOR
PORTLAND, MAINE 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259
TDD: (877) 428-8800

128 SWEDEN ST., STE. 2
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

Telephone: (207) 626-8800
TDD: (207) 626-8865

June 3, 2003

Senator Peggy Rotundo
Maine State Senate
3 State House Station
Augusta, Maine 04333-1515



Re: L.D. 389

Dear Senator Rotundo:

You have asked this office for an opinion as to whether L.D. 389, *An Act to Amend the Laws Governing Municipal Citizen Initiatives and Referenda*, if enacted, would violate the Maine Constitution. This legislation proposes to amend Title 30, M.R.S.A., § 3001 to limit the ability of citizens to retroactively modify, repeal, revoke, or invalidate certain final municipal actions through the initiative or referendum process. For the reasons stated below, we believe that L.D. 389, both in its original text and as amended by Committee Amendment "A" (H-354), would violate Article IV, Part 3, §21 of the Maine Constitution.

The Maine Constitution does not require municipalities to provide a referendum process for municipal affairs. However, in granting municipalities the authority to establish an initiative or referendum process, the Constitution reserves to the Legislature only the power to establish a uniform method for the exercise of that authority.

Article IV, Part 3, Section 21 of the Maine Constitution reads:

The city council of any city may establish the direct initiative and people's veto for the electors of such city in regard to its municipal affairs, provided that the ordinance establishing and providing the method of exercising such direct initiative and people's veto shall not take effect until ratified by vote of a majority of the electors of said city, voting thereon at a municipal election. Provided, however, that the Legislature may at any time provide a uniform method for the exercise of the initiative and referendum in municipal affairs.

Nothing in Article IV, Pt. 3, §21 gives the Legislature the authority to specify or limit the substantive areas of municipal regulation that may properly be the subject of the referendum process. Art. IV, Pt. 3, §21 itself, of course, establishes a substantive limitation by authorizing a municipal referendum process in regard to "municipal

affairs.” The Law Court has defined “municipal affairs” to include the “internal business of a municipality.” *Burkett v. Youngs*, 135 Me. 459, 464 (1938). *See also Albert v. Town of Fairfield*, 597 A.2d 1353, 1354 (Me. 1991).

Although Art. IV, Pt. 3, §21 of the Maine Constitution provides the Legislature with the authority to enact a uniform method for the exercise of the initiative and referendum in municipal affairs, the Legislature has not done so. Moreover, L.D. 389 does not purport to establish a uniform method for how citizens may exercise their rights. Instead, L.D. 389 proposes to limit the types of municipal affairs that are subject to the municipal initiative and referendum process. This is violative of Article IV, Pt. 3, §21.¹

The Legislature has broad powers to establish and modify the powers of municipalities and to define the scope of municipal affairs.² Thus the Legislature has the power to prohibit municipalities from retroactively vetoing the types of municipal actions that are the subject of L.D. 389. If the Legislature so acted, we do not believe that citizens could circumvent such a prohibition through the use the initiative and referendum process. However, the Legislature cannot directly impose such a limitation on the municipal initiative and referendum process without violating Art. IV, Pt. 3, §21.

I hope this information is helpful.

Sincerely,



G. Steven Rowe
Attorney General

¹ This opinion should not be read to suggest that retroactive modifications or repeals of municipal actions are constitutionally sound simply because they were effected by an initiative or people's veto. For example, due process or property interests of private parties may provide a basis for a successful constitutional challenge of such an initiative or people's veto.

² Art. VIII, Pt. 2, §1. Municipal corporations, as public bodies, may exercise only such powers as the Legislature has conferred upon them by law or which may have been granted to them directly by the Constitution. *Schwanda v. Bonney*, 418 A.2d 163 (Me. 1980).