

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Ninth  
Legislature***

OF THE

STATE OF MAINE

**Volume I**

**FIRST REGULAR SESSION**

**January 3, 1979 to May 4, 1979**

STATE OF MAINE  
One Hundred and Ninth Legislature  
JOURNAL OF THE SENATE

Wednesday, January 3, 1979

Pursuant to the provisions of the Constitution and the laws of the State of Maine, the Senators-elect to the One Hundred and Ninth Legislature convened in the Senate Chamber and were called to order by May M. Ross, Secretary of the Senate of the One Hundred and Eighth Legislature.

Prayer by Father John Anderson, St. Mary's Church, Old Town.

Father ANDERSON: Let us Pray! God you're always a loving Father, who will listen to our requests. We pray today especially for this assembly, that you will inspire it to concern itself with the common good; that you will guide it by your divine wisdom; that its decisions will always be in accordance with your divine will. That you will sustain it in all its undertakings by divine power. We ask you, O'Lord, this in Christ our Lord. Amen.

Communication

Office of the Secretary of State

To May M. Ross, Secretary of the Senate of the One Hundred and Eighth Legislature:

In compliance with 3 M.R.S.A., Section 1, I hereby certify that the following are the names and residences of the Senators-elect to the One Hundred and Ninth Legislature, as appears by the report submitted to the Governor under date of November 27, 1978.

- District 1 Walter W. Hichens of Eliot
- District 2 Robert M. Farley of Biddeford
- District 3 Ralph M. Lovell of Sanford
- District 4 Peter W. Danton of Saco
- District 5 Roland L. Sutton of Paris
- District 6 David G. Huber of Falmouth
- District 7 Ronald E. Usher of Westbrook
- District 8 Barbara A. Gill of South Portland
- District 9 Gerard P. Conley of Portland
- District 10 Mary Najarian of Portland
- District 11 Nancy Randall Clark of Freeport
- District 12 Barbara M. Trafton of Auburn
- District 13 Albert E. Cote of Lewiston
- District 14 Carroll E. Minkowsky of Lewiston
- District 15 David R. Ault of Wayne
- District 16 Donald R. O'Leary of Mexico
- District 17 Andrew Redmond of Anson
- District 18 Richard H. Pierce of Waterville
- District 19 Bennett D. Katz of Augusta
- District 20 John D. Chapman of Woolwich
- District 21 Samuel W. Collins, Jr. of Rockland
- District 22 Melvin A. Shute of Stockton Springs
- District 23 Thomas M. Teague of Fairfield
- District 24 Jerome A. Emerson of Corinna
- District 25 Howard M. Trotzky of Bangor
- District 26 Dana C. Devoe of Orono
- District 27 Joseph Sewall of Old Town
- District 28 Thomas R. Perkins of Blue Hill
- District 29 Harold L. Silverman of Calais
- District 30 Charles P. Pray of Millinocket
- District 31 James McBreaity of Perham
- District 32 Roland D. Martin of Frenchville
- District 33 Michael E. Carpenter of Houlton

IN TESTIMONY WHEREOF I have caused the Seal of the State to be herewith affixed at Augusta this third day of January, 1979.

MARKHAM L. GARTLEY  
Secretary of State

Which was Read and Ordered Placed on file.

The roll being called, the following Senators-elect responded to their names: Ault, Carpenter, Chapman, Clark, Collins, Conley, Danton, Devoe, Emerson, Farley, Gill, Hichens, Huber, Katz, Lovell, Martin, McBreaity, Minkowsky, Najarian, O'Leary, Perkins, Pierce, Pray, Sewall, Shute, Silverman, Sutton, Teague, Trafton, Trotzky, Usher.

31 Senators-elect having answered to the roll call, the Secretary declared that a quorum was present.

On motion by Mr. Katz of Kennebec, that

Senator-elect was charged with a message to the Governor informing him that a quorum of the Senators-elect was present in the Senate Chamber, ready to take and subscribe to the oaths of office required by the Constitution to qualify them to enter upon the discharge of their official duties.

Subsequently, Mr. Katz reported that he had delivered the message with which he was charged and the Governor was pleased to reply that he would attend upon the Senators-elect forthwith for the purpose of administering to them the oaths of office required by the Constitution.

Thereupon, the Governor, the Honorable James B. Longley entered and addressed the Senate:

GOVERNOR JAMES B. LONGLEY:

Would you please rise, raise your right hand and repeat after me, please.

Thereupon, the Senator-elect took and subscribed the oaths of office required by the Constitution.

GOVERNOR LONGLEY:

One of the most rewarding experiences of my tenure as Governor of the State of Maine has been the opportunity to administer the oath of public office to men and women like you...men and women who have stepped forward, often at personal sacrifice, to serve the citizens of Maine. Therefore, let me commend each of you for your willingness to try to help Maine and its people by your willingness to accept legislative involvement and responsibility.

In my inaugural address four years ago, I said that Maine had to be headed in a direction that would bring her people a quality of life without forcing them to sacrifice the things that have made the State unique in both spirit and beauty.

With the deep realization that no one individual designs the avenues of history, I stand before you today with the hope and prayer that I have at least used my brief time of service to help keep Maine on that course toward a quality of life for its people.

I do believe Maine is on the right course.

With the help and support of the 107th and 108th Legislatures and many other people from inside state government and from the private sector, I feel we have succeeded in instilling within Maine State Government an attitude of fiscal responsibility balanced with humanitarianism. With their help we have absorbed the deficits we inherited, created surpluses which have been returned to the people in the form of tax relief, and have left a balance for this new legislature and the new Governor to begin their work.

I said in my inaugural address four years ago that Maine was embarking on a unique experiment in government, with an Independent Governor, a Republican Senate and Democratic House. I said the eyes of the nation would be on Maine to see how we handled this unique experiment. I submit now, four years later that we handled it exceedingly well and I will compare Maine's accomplishments during that time period with those of any state in the nation or any Legislative-executive period in the history of the State. Albeit we had occasional disagreement yet the periods of cooperation and caring together showed results in areas such as:

- (1) Passing the first major tax reduction in the history of the state.
- (2) Working to support the Attorney General in what has been referred to as the most serious problem to face Maine since we separated from Massachusetts in 1820...The Indian Land Case.
- (3) Or, the legislature supporting this Independent Governor's programs for people...in which we met and improved Human Services...as well as balanced this humanitarianism with fiscal responsibility to:

(A) Provide what I am told is an all-time improvement in aid and programs for the elderly.

(B) Substantially improved services for the retarded and mental health community and absorbed seed money programs of community mental health agencies.

(C) Instituted a more involved and caring approach to those in our institutions and the pardon, parole and commutation process.

The results indicate that the experiment of a Republican Senate, Democratic House and Independent Governor worked...not because of the efforts of one individual or the efforts of one or more parties, but it worked because when the chips were down each came together and placed the best interests of the people of Maine first and their own differences second. For example, I believe the officials of Pratt and Whitney Aircraft...one of the world's largest and most reputable firms...had to be impressed when they were asked to locate in Maine by the Republican Senate President, the Democratic House Speaker, the Independent Governor and the Governor-elect. This firm and others as well have also had the knowledge that these elements also came together to absorb deficits, curb government spending and to provide tax relief to the people of this State, and to create a positive climate for industrial development.

The experiment did not always work quietly. There were disagreements and there were challenges, but in the final analysis I came to the conclusion that the time people should be concerned about government is when everyone is agreeing and when everything is quiet. Democracy, I submit, was designed for challenge...it is the difference between open and free discussions in town halls and state houses and the quiet trooping of faceless, expressionless masses to unknown destinies, such as we see in some nations of the world where disagreements, at least in the open, do not take place. The 109th Legislature and the new administration in the executive branch now embarks on its own experiment in Government. How well it serves the people of this State, I feel, will be measured in large degree by the openness and debate and yes the disagreement which will compose the sounds of democracy coming from the State House in Augusta.

On behalf of the people of Maine...this Independent asks you and challenges you...Republicans and Democrats, as well as Independents, to do everything possible to help the new Governor be the best Governor in the history of this State.

I have confidence that there exists in this body and the new administration the desire, the talent and the dedication to serve the people of Maine and to serve them well. My very best wishes to each of you and to Governor Brennan and his administration in that regard.

Thank you very much.

The Governor then withdrew from the Senate Chamber.

The SECRETARY: The Secretary recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: Madam Secretary: I move that the Senator from Kennebec, Senator Katz, be authorized to cast one ballot on the part of the Senate in favor of Joseph Sewall of Old Town for the President of the Senate.

The SECRETARY: The Senator from Cumberland, Senator Conley, moves that the Senator from Kennebec, Senator Katz, be authorized to cast one ballot on the part of the Senate in favor of Joseph Sewall of Old Town for President of the Senate. Is it the pleasure of the Senate that this motion receive passage? It is a vote.

Senator Katz of Kennebec cast one ballot for Joseph Sewall of Old Town for President of the Senate. The Secretary then declared Senator

Sewall of Penobscot duly elected President of the Senate for the political years 1979 and 1980.

The Secretary then appointed Senator Conley of Cumberland to escort the President of the Senate to the Governor's Office for the purpose of taking and subscribing to the necessary oaths of office to qualify him to enter upon the discharge of the duties as President of the Senate of the 109th Maine Legislature.

Subsequently the Senator reported that he had discharged the duties with which he was charged.

The Sergeant at Arms escorted the President of the Senate to the rostrum.

Thereupon, President Sewall of Penobscot was escorted to the rostrum amid the applause of the Senate Chamber, the members rising.

The PRESIDENT: Thank you, Senator Conley, for your kind escort, and your motion. I thank all the rest of you for your confidence in me. It gives me great pleasure to stand before you today as the presiding officer of this distinguished body. Serving a third term as the President of the Maine Senate is an honor and a responsibility which I assure you, I do not take lightly.

The beginning of any new legislative session offers its own unique opportunities and challenges. Today, with a new administration and legislature we have the opportunity to begin anew the task of serving the best interests of the people of Maine in a positive spirit of cooperation and mutual understanding.

Let us remember over the course of the next two years to treasure the rich tradition that we inherit as members of this body. That tradition is one of keen debate and informed decision making which places the peoples' interests above personal interest. Regardless of our party affiliations or disagreements on specific issues reasonable men and women can always arrive at solutions in a spirit of friendship and mutual respect. By conducting our business in this manner we assure that the peoples' interest is served.

We will no doubt be faced with many complex issues in the upcoming months, but in my opinion the overriding issue will be surviving within our present tax structure. To accomplish this will require hard decisions on priorities and programs but we must make those decisions in the interest of a healthy economic climate and in response to the obvious wishes of a vast majority of Maine's citizens.

I pledge to you that my door will be open to each of you regardless of party and look forward to working with all of you for the next two years.

I would also like to take this opportunity to express my sincere appreciation, and I am certain the appreciation of my fellow Senators to Mrs. Ross and her outstanding staff for the fine job they have done in preparing us for the opening of the session.

Thank you all very much.

At the request of the President, Senator Pierce of Kennebec escorted Senator-elect Andrew J. Redmond of Franklin to the Governor's Office for the purpose of subscribing the oath of office required by the Constitution.

Subsequently the Senator announced that he had performed the duty with which he was charged and escorted Senator Redmond to his seat in the Senate Chamber.

Senator Hichens of York was granted unanimous consent to address the Senate off the record.

Senator HICHENS: On the 3rd of January, forty-nine short years ago, a mighty storm was brewing, and it wasn't rain or snow. It was in the Conley household where a new son had been born, who proclaimed himself quite lustfully this January morn. "O ye Gods, another Irishman!" someone was heard to say. Right off a brawl was started in a real old Irish way.

"What's wrong with he's an Irishman," a burly giant roared. If anyone who stood their ground, was certain to be floored. "Oh nothing's wrong with Irishmen except there are too many, to keep the balance needed in this present world so zany. The nationalities in Maine are even-balanced now, for too many Irishmen around could tip the scales in the haul. There will soon be others added Brennan's, Mryttler, and the such and in future years the State of Maine may feel it is too much." My friends, the years have quickly passed and here we sit today, watching how these Irishmen have through life made their way. The one who sits among us is added to the clan a great many little Conley's and proved he's quite a man within his native city. The good old State of Maine has profited by his finesse, and using the old brain. He has been minority leader and has handled his job well. I hesitate to say much more for fear his head might swell; but I want to let my colleagues know I treasure as a friend, good old Gerry Conley and as he his way doth wind along life's highway may he find the wind behind his back, the sunshine lighting up the paths, may he never lack the very best life has to give, and always on the way may he be blessed by God above. Senator Conley this is your day.

Senator Conley was granted unanimous consent to address the Senate off the record.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator KATZ: Mr. President, I move that the Senator from Penobscot, Senator Trotzky be authorized to cast one ballot on the part of the Senate in favor of May M. Ross for Secretary of the Senate.

The PRESIDENT: Is it the pleasure of the Senate that this motion receive passage? It is a vote.

Senator Trotzky of Penobscot cast one ballot for May M. Ross as Secretary of the Senate. The Chair then declared May M. Ross duly elected Secretary of the Senate for the political years 1979 and 1980.

The President then appointed Senator Trotzky of Penobscot to escort the Secretary of the Senate to the Governor's Office for the purpose of taking and subscribing to the necessary oaths of office to qualify her to enter upon the discharge of the duties of the Secretary of the Senate.

Subsequently the Senator reported that he had discharged the duties with which he was charged. (Applause)

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Senator CHAPMAN: Mr. President, I move that the Senator from Kennebec, Senator Pierce be authorized to cast one ballot on the part of the Senate in favor of Mary S. Porter for Assistant Secretary of the Senate.

The PRESIDENT: Is it the pleasure of the Senate that this motion receive passage? It is a vote.

Senator Pierce of Kennebec cast one ballot for Mary S. Porter as Assistant Secretary of the Senate. The Chair then declared Mary S. Porter duly elected Assistant Secretary of the Senate for the political years 1979 and 1980.

The President then appointed Senator Chapman of Sagadahoc to escort the Assistant Secretary to the Governor's Office for the purpose of taking and subscribing to the necessary oaths of office to qualify her to enter upon the discharge of the duties of the Assistant Secretary of the Senate.

Subsequently, the Senator reported that he had discharged the duties with which he was charged. (Applause)

On Motion by Mr. Collins of Knox, a message was sent to the House of Representatives informing that body that the Senate had organized by the choice of Joseph Sewall as

President, May M. Ross as Secretary and Mary S. Porter as Assistant Secretary.

The President appointed Senator Collins of Knox to convey the message. The Senator retired to the Hall of the House.

Subsequently, Senator Collins reported that he had delivered the message with which he was charged.

On motion by Senator Hichens of York. ORDERED, that a committee of seven be appointed by the President, to whom the returns of votes for Senators for the political years of 1979 and 1980 shall be referred for examination and report.

Which was Read and Passed.

The President appointed:  
Senators:

KATZ of Kennebec  
COLLINS of Knox  
HUBER of Cumberland  
REDMOND of Somerset  
DANTON of York  
NAJARIAN of Cumberland  
O'LEARY of Oxford

On motion by Senator Usher of Cumberland. ORDERED, the House concurring, that the returns of votes for the Governor, given in the several cities, towns and plantations of the State for the political years 1979, 1980, 1981 and 1982, be referred to a Joint Select Committee of seven on the part of the Senate, with such as the House may join.

S. P. 023

Which was Read and Passed. Sent down forthwith for concurrence.

The President appointed:  
Senators:

PIERCE of Kennebec  
LOVELL of York  
SUTTON of Oxford  
GILL of Cumberland  
CONLEY of Cumberland  
PRAY of Penobscot  
MINKOWSKY of Androscoggin

Communication  
STATE OF MAINE  
DEPARTMENT OF STATE

Augusta, Maine  
January 3, 1979

To the President of the Senate and to the Speaker of the House of Representatives of the One Hundred and Ninth Legislature of the State of Maine:

In compliance with the Constitution and laws of the State of Maine, I have the honor to herewith transmit the returns of the votes cast for Governor in the several cities, towns and plantations in the State of Maine at the General Election held on November 7, 1978, as submitted by the appropriate officials of the municipalities involved immediately following said election.

Respectfully,  
MARKHAM L. GARTLEY  
Secretary of State  
STATE OF MAINE  
GENERAL ELECTION  
NOVEMBER 7, 1978  
GOVERNOR

	Joseph E. Brennan, Democrat Portland	Herman C. Frankland Bangor
Androscoggin	18,637	6,477
Aroostook	13,162	4,888
Cumberland	37,628	11,127
Franklin	3,607	1,681
Hancock	4,898	3,765
Kennebec	19,717	5,768
Knox	3,934	2,074
Lincoln	2,803	1,756
Oxford	7,159	3,298
Penobscot	21,046	8,084

Piscataquis	2,419	1,214	
Sagadahoc	3,605	2,096	
Somerset	6,666	2,894	
Waldo	3,281	1,749	
Washington	4,445	3,214	
York	23,486	5,804	
<b>Totals</b>	<b>176,493</b>	<b>65,889</b>	
	Linwood E. Palmer, Jr., Republican Nobleboro	James B. Longley, Write-in Lewiston	Others
Androscoggin	8,591	65	6
Aroostook	6,142	23	14
Cumberland	27,507	128	36
Franklin	2,947	9	20
Hancock	6,853	3	26
Kennebec	12,026	103	27
Knox	5,412	28	12
Lincoln	5,939	7	14
Oxford	5,950	16	22
Penobscot	14,101	67	35
Piscataquis	2,528	—	13
Sagadahoc	3,105	7	8
Somerset	4,639	98	80
Waldo	3,347	13	29
Washington	2,600	—	5
York	15,175	61	39

Total 126,862 628 386  
 Which was Read and Referred to the Committee on gubernatorial vote.  
 Sent down forthwith for concurrence.

**Communication**  
**STATE OF MAINE**  
 Office of the Secretary of State

Augusta, Maine  
 January 3, 1979

To the President of the Senate:

In compliance with the Constitution and laws of the State of Maine, I have the honor to herewith transmit the returns of the votes cast for Senators to the Legislature in the several cities, towns and plantations in the State of Maine at the General Election held on November 7, 1978.

Respectfully,  
**MARKHAM L. GARTLEY**  
 Secretary of State

<b>DISTRICT 1</b>		
Walter W. Hichens, Eliot		9,150
Others		23
<b>DISTRICT 2</b>		
Robert M. Farley, Biddeford		7,012
Artemus E. Weatherbee, Kennebunk		4,292
<b>DISTRICT 3</b>		
Irving H. Kellman, Sanford		4,366
Ralph M. Lovell, Sanford		7,217
Others		2
<b>DISTRICT 4</b>		
Berton K. Braley, Saco		6,010
Peter W. Danton, Saco		7,103
Others		6
<b>DISTRICT 5</b>		
Dennis B. Gray, Norway		4,188
Roland L. Sutton, Paris		7,391
Others		1
<b>DISTRICT 6</b>		
David G. Huber, Falmouth		6,942
David T. Mulhearn, Naples		1,744
Mark Terison, Falmouth		5,406
<b>DISTRICT 7</b>		
Frank A. Farwell, Jr., Westbrook		4,807
Ronald E. Usher, Westbrook		7,054
Others		5
<b>DISTRICT 8</b>		
Peter J. Curran, South Portland		5,513
Barbara A. Gill, South Portland		6,229
<b>DISTRICT 9</b>		
Gerard P. Conley, Portland		5,822
<b>DISTRICT 10</b>		
Mary Najarian, Portland		6,532
David E. Robinson, Portland		5,343
<b>DISTRICT 11</b>		
Nancy Randall Clark, Freeport		7,142
Margaret T. Ring, Brunswick		4,785
<b>DISTRICT 12</b>		

Vesta L. Orr, Auburn	3,263
Barbara M. Traflet, Auburn	7,597
Others	1
<b>DISTRICT 13</b>	
Albert E. Cote, Lewiston	8,726
<b>DISTRICT 14</b>	
Carroll E. Minkowsky, Lewiston	8,466
Others	7
<b>DISTRICT 15</b>	
David R. Ault, Wayne	6,095
William B. Manheimer, Monmouth	5,359
John Portela, Litchfield	764
<b>DISTRICT 16</b>	
Robert F. Bradford, Rumford	3,172
Anthony Wallace Martin, Dixfield	1,080
Donald R. O'Leary, Mexico	5,635
<b>DISTRICT 17</b>	
Andrew Redmond, Anson	8,367
Others	6
<b>DISTRICT 18</b>	
Jo Maheu Fitzpatrick, Belgrade	3,658
Richard H. Pierce, Waterville	7,248
<b>DISTRICT 19</b>	
Bennett D. Katz, Augusta	8,794
Others	8
<b>DISTRICT 20</b>	
John D. Chapman, Woolwich	10,506
Others	10
<b>DISTRICT 21</b>	
Samuel W. Collins, Jr., Rockland	7,802
Chester E. Johansen, Damariscotta	4,039
<b>DISTRICT 22</b>	
Eugene B. Bowler, Camden	1,108
Melvin A. Shute, Stockton Springs	7,091
Donald J. Webber, Belfast	2,915
John W. Bullard, Northport (Write-in)	202
Others	11
<b>DISTRICT 23</b>	
Thomas M. Teague, Fairfield	5,493
Sheldon L. Ward, Winslow	4,854
<b>DISTRICT 24</b>	
Earl H. Baldwin, Jr., Orrington	4,804
Jerome A. Emerson, Corinna	6,218
Others	4
<b>DISTRICT 25</b>	
Louise Shindler, Bangor	3,233
Howard M. Trozky, Bangor	5,498
<b>DISTRICT 26</b>	
Patricia A. Clark, Orono	5,170
Dana C. Devoe, Orono	5,209
Others	1
<b>DISTRICT 27</b>	
Joseph Sewall, Old Town	8,156
Others	11
<b>DISTRICT 28</b>	
Virgil Don Mahoney, Brooksville	2,309
Thomas R. Perkins, Blue Hill	10,163
Others	2
<b>DISTRICT 29</b>	
Charles Casey, Baileyville	1,575
Harold L. Silverman, Calais	4,800
J. Hollis Wyman, Milbridge	3,958
Others	1
<b>DISTRICT 30</b>	
Woodrow A. Mercier, East Millinocket	4,032
Charles P. Pray, Millinocket	6,569
<b>DISTRICT 31</b>	
Frank W. Hussey, Presque Isle	2,929
James McBreairey, Perham	4,517
<b>DISTRICT 32</b>	
Roland D. Martin, Frenchville	5,785
<b>DISTRICT 33</b>	
Michael E. Carpenter, Houlton	7,263
Others	12

Which was Read and referred to the Committee on Senatorial Vote.

At this point a message was received from the House of Representatives, through Representative Elizabeth Mitchell of Vassalboro, announcing the organization of the House by the election of John L. Martin as Speaker, Edwin H. Pert as Clerk, Deborah B. Wood as Assistant Clerk.

On motion by Senator Katz of Kennebec, ORDERED, that a message be sent to the House of Representatives proposing a Conven-

tion of the two branches of the Legislature in the Hall of the House at 4 o'clock in the afternoon, for the purpose of electing a Secretary of State, pursuant to Art. V, Part Third, Section 1 of the Constitution of the State of Maine; and for the purpose of electing a State Treasurer, pursuant to Art. V, Part Fourth, Section 1 of the Constitution of the State of Maine.  
 Which was Read and Passed.

The President appointed Senator Katz of Kennebec to convey the message. The Senator then retired to the Hall of the House.

Subsequently, Senator Katz reported that he had delivered the message with which he was charged.

**Communications**

Department of Educational and Cultural Services  
 November 29, 1978  
 TO: Members of the 109th Legislature  
 Bureau of the Budget  
 FROM: H. Sawin Millett, Jr., Commissioner  
 SUBJECT: Enclosed Notification of Actual Education Costs for 1977-78  
 Maine Statutes require that the Legislature and the Bureau of the Budget be notified of the "actual education costs" for the base year 1977-78. The attached statement provides the information as defined.

This particular listing of expenditures itemizes specific program costs by subject, including both State and local costs. Items in the list are not exclusive and, therefore, totals of costs have to be approached cautiously. The total of Items A through G represents local expenditures from State and local sources for the basic education allocation. Items H through M are duplicative in that they represent State monies sent to the locals to support the basic education programs. Items N and O are separate amounts expended by the locals to support their programs.

<b>Department of Educational and Cultural Services</b>	
November 29, 1978	
TO: Members of the 109th Legislature	
Bureau of the budget	
FROM: H. Sawin Millett, Jr., Commissioner	
SUBJECT: Actual Education Costs for Base Year 1977-78	
Pursuant to the provisions of 20 M.R.S.A. 4744, I forward herewith notification of the "actual education costs" as defined in subsection 1 of 20 M.R.S.A. 4743 for the base year 1977-78.	
A. Elementary operating costs	\$151,186,688
B. Secondary operating costs	93,756,932
C. Special education costs for programs operated by administrative units	11,081,854
D. Special education tuition and board, including medical costs	3,284,062
(1) Tuition and board for pupils placed by administrative units	\$3,114,814
(2) Tuition and board for State wards and direct State placements	169,248
(3) Adjustments under section 4749, subsection 6	N/A
E. Vocational education costs	7,927,543
F. Transportation costs	
(1) Operating costs	18,889,489
(2) Purchase of buses	2,982,817
G. Debt service costs	25,863,930
Major capital costs	2,631,535
H. Costs of unusual enrollment adjustments	495,635
I. Cost of geographic isolation adjustments	308,933
J. Cost of adjustments for small administrative units	49,121
Cost of guaranteed allocation for decrease in enrollment	75,671
K. Cost of reimbursement for private school transportation	206,525
L. State expenditures for paragraphs C-K for 1977-78	

(includes portion from Uniform Property Tax)	
(1) Special education costs for programs operated by the administrative units	7,946,222
(2) Special education tuition and board, excluding medical costs	2,725,107
(3) Vocational education costs	5,471,836
(4) Transportation costs	
a. Operating costs (prorated at 90%)	14,536,643
b. Purchase of buses	2,677,215
(5) Debt service costs	
a. Principal & interest	25,863,930
b. Insured value factor	298,698
c. Leases	442,824
(6) Major capital costs	196,552
(7) Costs of unusual enrollment adjustments	495,635
(8) Costs of geographic isolation adjustments	308,933
(9) Costs of reimbursement for private school transportation	206,525
M. Audit adjustments	70,816
N. Optional local appropriations with state participation	
(1) Local share	17,381,359
(2) State share	6,911,945
O. Optional local funds without state participation	10,427,886

The above figures include all adjustments in expenditure reports through November 29, 1978 and include state and local monies only except that Federal P. L. 874 funds are included.

NOTE: The sum of items A to G represent the total expenditures for the base year while items H to O are duplicative.

Which was Read and Ordered Placed on File.

#### Department of Business Regulation

December 28, 1978

#### TO MEMBERS OF THE ONE HUNDRED AND NINTH SENATE

Gentlemen:

It is with pleasure that as Commissioner of the Department of Business Regulation I transmit the following report pertaining to a study of the costs and benefits accruing to the State if a self-insurance plan were instituted for state employees and their dependents. This action has been taken to fulfill the Joint Resolution contained in Chapter 75 of the Resolves of 1978.

At this time I wish to thank the members of the committee who assisted in making this report possible.

Respectfully submitted,  
ALFRED W. PERKINS  
Commissioner

Which was Read and with accompanying papers, Ordered placed on file.

At this point a message was received from the House, through Representative James E. Tierney of Lisbon Falls, informing the Senate that the House concurs in the proposal for a Joint Convention, to be held at 4 o'clock this afternoon in the Hall of the House of Representatives, to receive such action as might come before it.

CHARLES L. CRAGIN  
349 Gray Road  
Falmouth, Maine 04105

January 3, 1979

The Honorable Joseph Sewall  
President of the Senate  
109th Maine Legislature  
State House  
Augusta, Maine 04333  
Dear President Sewall:

As you are aware, I am the Republican candidate for the office of Attorney General of the State of Maine for the 1979-1980 biennium. Following the public announcement of my candidacy in mid-November 1978, I undertook a thorough review of the various statutes relating to the office of Attorney General as well as opinions of the Maine Supreme Judicial Court concerning the common law powers of the At-

torney General.

During the course of that review, I considered the provisions of 5 MRSA § 15, entitled "Disqualification of former state employees and the former partners of present state employees from participation in certain matters." This statute provides in pertinent part:

"2. Partner of former executive employee. (sic) Any former partner of a person who is currently a member of the classified or unclassified service employed by an executive agency shall be guilty of a Class E crime if that former partner, within one year after the partnership has ended, acts as agent or attorney for anyone other than the State in connection with an official proceeding in which:

"A. The State is a party or has a direct and substantial interest; and

"B. The subject matter at issue is directly within the official responsibility of the person, currently employed by an executive agency, who was formerly his partner."

As you are aware, I am currently a partner in the law partnership known as Verrill & Dana. The firm has its principal offices in Portland with offices elsewhere in the State of Maine. Verrill & Dana is engaged in the general practice of law throughout the State; its partners and associates appear in all courts in the State representing individuals, partnerships, joint ventures, corporations, and other legal entities; it also from time to time represents public agencies such as the Maine Health Facilities Authority; and in the course of its practice it may also advise, represent, and appear for its clients in civil and criminal matters before virtually all State officers, State departments, and State boards and commissions.

After reading the statutory provisions quoted above, I questioned their applicability to the position of Attorney General. If applicable, the statute would place prospective criminal limitations on the practice of the person who assumes the office of Attorney General. These disabilities would arise at the conclusion of his or her term of office. However, the statute, if applicable to the Attorney General, would have immediate and far reaching ramifications to former partners of the person occupying that office.

If elected Attorney General, I will immediately resign and withdraw from the partnership of Verrill & Dana. Furthermore, I will not participate in, and will disqualify myself with respect to, any official proceeding in connection with which either I or my former partners or associates had, at the time of my election, any responsibilities of the Attorney General and in which the State is a party or in which the State has direct and substantial interest. Both my former partners and I will of course abide by the Code of Professional Responsibility adopted by the American Bar Association and the provisions of any rules, regulations, or standards governing the professional conduct of attorneys promulgated by the Maine Supreme Judicial Court.

If I accepted election to the office of Attorney General and the statute in question applied to the holder of this office, my former partners would be forced, without their consent and against their will, to forebear from representing clients in "official proceedings" with the State of Maine which are "directly within the official responsibility" of the Attorney General. If the applicability of this statute were not determined prior to the election and if my former partners continued to represent clients before the State, it might later be determined that each and every one of them had committed a crime leading to fines, imprisonment, and possible disbarment. It is only because of my candidacy and possible election that this situation arises.

Because of the far-reaching ramifications of the statute, both the firm of Verrill & Dana and I employed independent legal counsel, both within and without the State, to review the stat-

ute, its legislative history, and other relevant statutes and judicial opinions in an attempt to ascertain whether and, if so, how, the statute, penal in nature, applied to constitutional officers elected by the Legislature. The questions which were the subject of the research included the following:

1. Is the Attorney General, as a constitutional officer, considered to be a person who is "a member of the classified or unclassified service employed by an executive agency" for the purposes of 5 MRSA § 15?

2. Does the statute apply only to former partners or does it also reach former associates?

3. Does 5 MRSA § 15 relate only to members of law partnerships or does it also reach employees of professional associations of attorneys?

4. Does the statute unconstitutionally discriminate against partners in law firms in favor of their associates and/or lawyers who have chosen to practice through professional associations or corporations, thereby depriving such partners of equal protection of the laws?

5. Does the statute violate the separation of powers provisions of the Maine Constitution?

6. If the statute is unconstitutional or otherwise impermissibly overbroad as applied to me, if I am elected Attorney General, and to my former partners, is the statute rendered valid and effective by not applying it to situations in which the Attorney General voluntarily disqualifies himself?

Until recently, because of the various ambiguities contained in the statute and the lack of legislative history, no independent counsel has been willing to say, with total certainty, that the statute would not apply to my former partners and/or associates were I to be elected Attorney General, in the absence of judicial clarification, particularly as to the effect of my willingness to disqualify myself from, and to refuse to participate in, any particular matter, as Attorney General, which otherwise might be construed to be within the statute's ambit. On December 20, 1978, Deputy Attorney General Donald G. Alexander transmitted a letter to Representative Paul Boudreau stating that, in the opinion of the office of the Attorney General, the statute in question does not apply to the Attorney General. A copy of that letter is attached and incorporated herein.

While I remain the nominee of the Republican members of the 109th Maine Legislature for the office of Attorney General, I wish respectfully to advise the Senate, through you, that I cannot, in good conscience, accept a position which I sincerely wish to undertake so long as the possibility exists that 5 MRSA § 15 applies to the Attorney General and former partners of the Attorney General.

I believe that the question of the applicability of 5 MRSA § 15 to constitutional officers and their former partners poses an important question of law. The uncertainty concerning the applicability of this criminal law, in my opinion, deprives both the members of the Legislature and candidates for constitutional office from knowing, at the outset, the scope of restrictive conditions imposed upon such officers. The uncertainty of this law's applicability impairs the ability of the members of the Legislature to secure qualified candidates for constitutional offices and deters citizens from being willing to undertake these offices.

Because of the uncertainty which surrounds the applicability of this statute, I respectfully request that the Senate consider propounding questions to the Justices of the Supreme Judicial Court in order to determine the applicability of 5 MRSA § 15 to the Attorney General and to persons who were his or her partners within one year prior to the assumption of the office. In the event that the Justices decline to answer the question or, in the alternative, advise the Senate that 5 MRSA § 15 applies to the Attorney General and his or her former partners, I will, regrettably, withdraw as the Republican candi-

date for the office of Attorney General.

Very respectfully yours,  
CHARLES L. CRAGIN

Which was Read and Ordered Placed on file.

#### Bills and Resolution Requiring Reference

The following 8 Bills and 1 Resolution were transmitted by the Secretary of the Senate of the 108th Legislature in accordance with the provisions of Joint Rule 21.

Senator-elect Collins of Knox, Co-sponsor Senator-elect O'Leary of Oxford presented, Bill, An Act to Establish the Maine Probate Code. (S. P. 1) (L. D. 1)

Senator-elect Danton of York presented, Bill, An Act to Make Drinking in an Unlicensed Public Place a Class E Crime. (S. P. 2) (L. D. 2)

Senator-elect O'Leary of Oxford presented, RESOLUTION, Proposing an Amendment to the Constitution of Maine to Limit Tax Increases to a One-year Period to Require Further Legislation and Economic Impact Analysis for the Further Continuation of any Tax Increase and to Require a Two-thirds Vote of Each House to Extend the Tax. (S. P. 3) (L. D. 3)

Senator-elect Redmond of Somerset, presented.

Bill, An Act to Remove Moose River from the Maine Forestry District. (S. P. 4) (L. D. 4)

Senator-elect McBreaury of Aroostook presented.

Bill, An Act to Provide for Pre-payment of State Bonded Debt. (Emergency) (S. P. 5) (L. D. 5)

Senator-elect Redmond of Somerset presented.

Bill, An Act to Require Candidates for Nomination by Primary Petition to File Petitions by April 1st of Election Year. (S. P. 6) (L. D. 6)

Senator-elect Collins of Knox presented, Bill, An Act to Make Corrections of Errors and Inconsistencies in the Laws of Maine. (Emergency) (S. P. 7) (L. D. 14)

Senator-elect Redmond of Somerset, Co-sponsor Senator-elect Collins of Knox presented.

Bill, An Act to Revise the Inland Fisheries and Wildlife Laws. (S. P. 8) (L. D. 15)

Senator-elect Collins of Knox, presented,

Bill, An Act to Strengthen and Streamline the Habitual Offender Law. (Emergency) (S. P. 9) (L. D. 16)

On motion of Senator Katz of Kennebec tabled, pending reference.

#### Orders

On motion by Senator Collins of Knox,

WHEREAS, Charles L. Cragin, a partner of Verrill & Dana, a law firm located in Portland, Maine, with offices elsewhere in the State, was nominated for Attorney General by the Republican members of the Maine House of Representatives and Senate of the 109th Maine Legislature; and

WHEREAS, on January 3, 1979, lists of the number of votes cast for candidates for the House of Representatives and the Senate of the 109th Maine Legislature (which had been received at the most recent election and sorted, counted, declared and recorded by the clerks of the various cities and towns, Maine Constitution, Article IV, Part 1, Section 5; Article IV, Part 2, Section 3, and thereupon forwarded to the Secretary of State, id., for the examination by the Governor, Maine Constitution, Article IV, Part 1, Section 5; Article IV, Part 2, Section 4) have been laid before both houses of the 109th Maine Legislature; the respective houses of the 109th Maine Legislature have finally determined their numbers, and the members of the 109th Maine Legislature have been sworn in by the Governor; it is now the duty of those elected to both houses of the 109th Maine Legislature by joint ballot of the Senators and Representatives in convention to choose an Attorney General of Maine, pursuant to the Maine Constitution, Article IX, Section 11, and

WHEREAS, as a result of this nomination, Mr. Cragin will be proposed as the Republican candidate for election to the office of Attorney General of Maine by joint ballot of the Senators and Representatives in convention, pursuant to Maine Constitution, Article IX, Section 11; and

WHEREAS, Mr. Cragin has stated that he cannot accept election to this high office unless the inapplicability of the Maine Revised Statutes Annotated, Title 5, section 15 to him and the remaining partners of Verrill & Dana, after his resignation and withdrawal from the partnership in the event of election, is clarified; and

WHEREAS, the Senate of the 109th Legislature is advised that: Verrill & Dana is engaged in the general practice of law throughout the State; its partners and associates appear in all courts in the State representing individuals, partnerships, joint ventures, corporations and other legal entities; it also from time to time represents public agencies, such as the Maine Health Facilities Authority; and in the course of its practice it may also advise, represent and appear for its clients in civil and criminal matters before virtually all state officers, state departments and state boards and commissions; and

WHEREAS, Mr. Cragin has advised the Senate of the 109th Maine Legislature that, if elected: He will immediately resign and withdraw from the partnership and will not participate in, and will disqualify himself as Attorney General with respect to, any official proceeding in connection with which he or his former partners and associates had, at the time of his election, any responsibilities as lawyers in private practice which are directly within his official responsibilities as Attorney General and in which the State is a party or in which the State has a direct and substantial interest; and both he and his former partners will, of course, abide by the Code of Professional Responsibility adopted by the American Bar Association, as from time to time amended, and the provisions of any rules, regulations, or standards governing the professional conduct of attorneys contained in any Maine Code of Professional Responsibility promulgated by your honorable Court in response to its order establishing a Select Commission on Professional Responsibility, dated January 17, 1978, as supplemented by an order entered April 5, 1978; and

WHEREAS, if the Maine Revised Statutes Annotated, Title 5, section 15, subsection 2, (erroneously entitled "Partner of former executive employee.") has the consequence of making it a crime for any former partner of a constitutional officer of this State to continue to practice his or her profession in a manner consistent with all relevant ethical standards applicable to his or her professional conduct, at least two very serious consequences of great concern to the citizens of Maine would result:

A. Where relations among the partners are amicable, the pool of potential candidates for constitutional offices would be substantially reduced, thus depriving Maine of some of its most qualified citizens as public servants; and

B. Where the relations among the partners are hostile, the election to constitutional office of a partner could deprive his or her former partners of their ability to earn a livelihood in the practice of the profession in which they are trained, qualified and experienced, without any act, consent or forbearance on their part; and

WHEREAS, the Maine Revised Statutes Annotated, Title 5, section 15 is ambiguous with respect to its applicability to constitutional officers and, therefore, does not permit the members of the Senate or candidates for constitutional offices elected by the Legislature to ascertain, prospectively, the potential restrictions, of a criminal nature, on persons elected to such positions or to former partners of persons elected to such positions; and

WHEREAS, the Senate of the 109th Legis-

lature urgently desires guidance as to the application of the Maine Revised Statutes Annotated, Title 5, section 15 in order to know whether, as a practical matter, it is forestalled from nominating and participating in the election of anyone as Attorney General who currently practices law in a partnership; and

WHEREAS, the Senate of the 109th Legislature is unwilling to participate in a joint convention called for the purpose of electing an Attorney General until its members have been advised by the Justices of the Supreme Judicial Court as to their views on the applicability of the Maine Revised Statutes Annotated, Title 5, section 15 to Mr. Cragin and any other qualified lawyer who is currently a member of a law partnership and the former partners of any of them if he or she is elected Attorney General; and

WHEREAS, it appears to the members of the Senate of the 109th Maine Legislature: That the following are important questions of law; that the occasion is a solemn one; and that the opinions requested hereby are designed to aid the members of the 109th Maine Legislature in the exercise of their constitutional responsibility pursuant to the Maine Constitution, Article IX, Section 11 to choose an Attorney General: now, therefore, be it

ORDERED, that in accordance with and by virtue of the provisions of the Maine Constitution, Article VI, Section 3, the Justices of the Supreme Judicial Court are hereby respectfully requested to give to the Senate their opinions on the following questions, to wit:

I

Is a constitutional officer elected by the people or the Legislature and subject to removal by impeachment for misdemeanor in office or on the address of both branches of the Legislature, pursuant to the Maine Constitution, Article IX, Section 5, a person who is currently or who has been "a member of the classified or unclassified service employed by an executive agency" within the meaning of the Maine Revised Statutes Annotated, Title 5, section 15, subsections 1 and 2?

II

If the answer to Question I is in the affirmative, is it a crime for a former partner of the Attorney General (or any other constitutional officer), within one year after the Attorney General has withdrawn from the partnership, to act "as an agent or attorney for anyone other than the State in connection with any official proceeding in which:

"A. The State is a party or has a direct and substantial interest; and

"B. The subject matter at issue is directly within the official responsibility of the

.....  
Attorney General; if the Attorney General disqualifies himself: From participating in any way in any official proceeding which was the subject of his professional responsibility as a private lawyer; from participating in any such official proceeding in which his former partners act as agents or attorneys; and from participating in any official proceeding in which he has any economic interest whatsoever, except as a general citizen?

III

If the answers to Questions I and II are in the affirmative, would conduct of former partners of the Attorney General (or other constitutional officers) proscribed by the Maine Revised Statutes Annotated, Title 5, section 15, subsection 2, constitute crimes if performed by associates or employees of former partners of the Attorney General?

IV

Does the Maine Revised Statutes Annotated, Title 5, section 15, subsection 2, apply to attorneys who are employees of professional associations or professional corporations which are organized pursuant to the Professional Service Corporation Act, Maine Revised Statutes Annotated, Title 13, chapter 22?

V

Is the Maine Revised Statutes Annotated, Title 5, section 15, subsection 2 unconstitutional as applied to lawyers in violation of the separation of powers provisions of the Maine Constitution, Article III, Sections 1 and 2, especially if your honorable Court, in discharging its responsibilities of supervising the bar, promulgates by rule a Maine Code of Professional Responsibility governing the conduct of lawyers, in the public service, and former partners and associates (in a partnership or professional association or corporation) and employees of lawyers in the public service?

Which was read.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: Mr. President and members of the Senate. Once again the majority party has presented to us for consideration a series of questions proposed to our Supreme Judicial Court, under Article 6, Section 3 of our Constitution, for advisory ruling on Solemn Occasions.

Once again the majority party of the Maine Senate, has erred fundamentally in its analysis of the reasons and the policies behind the Constitutional provision.

Anglo-American Jurisprudence is based on the concept that the best decisions made by the judiciary are made in deciding real cases between real people. Decisions made in this fashion are only done after full consideration and after it has been determined that the issue is proper for judicial judgement. Abstract questions must be avoided at all costs.

Of course there is a way the majority party of the Senate could greatly reduce the issue, of whether or not this question is abstract. The 109th Legislature could meet in Joint Convention and Mr. Cragin's name could be placed in nomination for the office of Attorney General, at that point the Joint Convention can move to recess until the Supreme Judicial Court responds to that inquiry. Why has not this logical route been taken? The answer is obvious, the Republican Party is afraid to ask the Joint Convention to table a nomination, because it does not think that it has the votes.

The leaders of the Republican party and Mr. Cragin and the law firm of Verrill and Dana is afraid to allow the Joint Convention to work its will. This fear is so deep that they are willing to pervert our usual processes and give the Supreme Judicial Court an abstract question.

An abstract question only because they do not have the political muscle to win a simple tabling motion. This is the essence of a political move and our Law Court should not be involved. There is a long and fundamental tradition that the American Judiciary should absent itself from political embroilment. The Court is to determine how justice is to be meted out in our society, and not to decide political questions for elected officials who are unwilling or who are afraid to face them. I will vote to oppose sending these questions to the Supreme Court, because the issue is at first abstract, and second political. Our constitution requires that we meet in order to select certain constitutional officers traditionally among these has been, the office of Attorney General. This selection is to be done by Joint Convention and by secret ballot. No such Joint Convention has been called, however, and there is no particular individual as yet to be nominated for this high post. Each political party in its own way through the media has broadcast the possible names for the selection, but no official legal act has yet been taken. Therefore before the Joint Convention has met and while no nominations have been made we are asking the Supreme Court to rule on a completely abstract question, this can only make for bad law.

Second, the issue is obviously a political one, the Republican Party is trying to free itself from a difficult political position. They have

decided in caucus that Charles L. Cragin III, of the firm of Verrill & Dana, should be our state's next Attorney General. It must be emphasized that there is no legal or constitutional impediment for Mr. Cragin to assume that position, indeed Mr. Cragin could be sworn in today. To repeat, nothing would stop Mr. Cragin from being Attorney General and there is nothing in this constitutional question which in any way inhibits or restricts the 109th Legislature meeting in Joint Convention and making its decision.

What then is the issue? It is simple, does a particular statute, which a previous Legislature has passed, apply to a particular law firm. This is not a question to be decided by our Supreme Court Justice under the rules of a Solemn Occasion, to a public body. This is a question of a private law firms relationship to the criminal and civil law. This is precisely the type of issue which should be resolved in the normal course of judicial events. It is why we pay our Judges, our District Attorneys, and yes and even our Attorney General. I am sure that the firm of Verrill and Dana will be able to find somewhere in our fine state someone with the legal skills necessary to defend them before our judiciary.

Should the majority party nonetheless preserve and send these questions to our Supreme Judicial Court, they will be perverting the constitutional bases of a Solemn Occasion. This is a transparent attempt to drag our judiciary into the middle of the political process. If they succeed the reputation of the Maine Supreme Judicial Court will be forever impaired.

If the Supreme Judicial Court gives in to the pressures of the majority party of this branch of the Legislative they can rest assured that this will only be the first of many, many questions to them regarding the interpretation of laws, to private law firms and business in the state without regard to the normal judicial process.

The Supreme Judicial Court can be assured that the flood gates will be opened and our increasingly, lawless legislature will be turning to them on every possible occasion for a decision. The precedent that they set with these questions will be felt by the outer reaches of our state government for years to come.

I urge the members of this Senate to reject the motion of the good Senator from Knox, Senator Collins. To keep from our Supreme Court this abstract and political issue.

Therefore, Mr. President, I move that this order be indefinitely postponed. I request that it be taken by the Yeas and Nays.

The PRESIDENT: A Roll Call has been requested. The Chair recognizes the Senator from Kennebec Senator Katz.

Senator KATZ: Mr. President, I would be presumptuous if I attempted to respond to the legal arguments of the minority floorleader. I am confident that others more capable, will follow my debate.

But I could not help but listen to the remarks of the minority leader and think that, in heaven's name, where has he been? Is there any question in the minds of anybody who has been reading the papers for weeks, that Charles L. Cragin is going to be the nominee of the Republican Party for Attorney General, if this cloud is removed? Is there anybody who has not been reading the steady stream of editorial comment, asking and pleading with the Legislature to go to the Court in a proper fashion to resolve this question which goes far beyond the question of whether or not Mr. Cragin can serve, or whether or not Mr. Cragin's partners will be penalized if he should serve? Has he read any of the editorials including the one in the Bangor Daily News this morning, and I must confess that I make it a point not to read the editorial page of the Bangor Dailey News, but this was on my desk.

I would like to read a few remarks which are typical of what I have been reading in editorial

comment which tends to express what the people are saying around the State of Maine. He said "It would be regrettable if the Maine Senate got cold feet over the candidacy of Charles Cragin as State Attorney General. Not only is Cragin highly qualified for the post in terms of experience and professional credentials he is to borrow from Dwight Eisenhower. "Clean as a hound's tooth." Not unlike Mr. Cragin it goes on talking about an old friend, a beloved friend, who has passed on, Richard Dubord, a former Democratic candidate for Governor, a man who would have made an outstanding Governor and, subsequently, became a Democratic Attorney General. It said "not only Mr. Cragin, but Mr. Dubord brought credentials and experience to the Attorney General's post and like Cragin, Dubord was a former gubernatorial candidate and a lawyer from a very prominent law firm which was accustomed to doing business with state government." What has happened since then?

We passed a law in the 107th, I believe, and just before the session started today I went up to five members of this body, who served in the 107th, and said to them, "when you voted for this bill, was it your understanding that you were voting to include the constitutional officers to be incorporated in Title 5, Section 15, sub-section 2 of the Maine Revised Statutes?" The answer was "No."

I was in that body, there is no way that I would have voted for this Bill if I had felt that it applied to constitutional officers, as a matter of fact, it was not until Charles Cragin himself raised the issue that we become alert to a possible problem with the law.

Not it might have been that there were one or two clairvoyant people in the 107th who were pushing this legislation to apply to constitutional officers. I heard nothing about it, and I suspect that in debate here today that we will get some indication, of just what the Legislative Record shows. Well, the Supreme Court of the State of Maine is going to be impaired permanently be dealing with an issue that the people of the State are asking? The Legislature will be lawless, by passing this Order and asking the Court for an opinion that everyone is asking for? Lawless, impaired, I just cannot react positively when the minority leader says that if we had framed things differently, if we had gone into a Joint Convention and let the Republican nominee be nominated and then recessed the Joint Convention that they would have had no objections. That it is only the procedures that they are concerned about? Boush.

In every inch of the way, the Democratic Party has been trying to toss barriers into the resolution of the problem with editorial comments my constituents, your constituents, are asking should be resolved. Indeed Mr. Cragin himself says that if it is not resolved, he would not be a candidate. Well, I imagine that the legal concerns about whether or not this is a Solemn Occasion can be dealt with better than I. If the Democratic Party here today is trying to cover itself with a blanket of piety in opposing the resolution of the Solemn question it falls far short of its mark.

The PRESIDENT: The Chair recognizes the Senator from Knox Senator Collins.

Senator COLLINS: Mr. President and members of the Senate. I understand the concerns of the minority leader, Senator from Cumberland Senator Conley. They have to do not with the difficulty of this question, or with the need that the question be answered, but with the question of timing. When some of us were here nearly a month ago, as members of the 108th Legislature, we sought at that time, to resolve this same question, by sending the question to the Law Court. The Law Court came back to us with an answer saying in effect that we were premature. They pointed out that the 108th Legislature should not be asking questions that were the problems of the 109th Legislature.

No where in that opinion, which I have read and reread many times, do I find any hint that the question ought not to be answered when it became timely. So I think the question that the minority leader has presented is whether the timeliness is before we move in the Joint Convention or even after election.

I submit to you that it is much better service to the people of this state, to do it in the most efficient and orderly manner. Not to have the prospect of an Attorney General being elected and having to resign. Not to have a period of uncertainty while this man is in office or waiting to be sworn into office, but to get the answer as early on as possible. It is the judgement of many attorneys, and we all know that attorneys will differ in their opinions, but it is the judgement of many attorneys that this is an appropriate time to seek the answer.

I once again point out to the Senate, that the answer to this question effects all of our Constitutional Officers, the Governor, as well as the Secretary of State, the State Treasurer, the State Auditor and the Attorney General. It will have to be faced in years to come, if not now; and it needs to be faced now in order to accomplish the orderly process of the State's business.

I, too, was a part of the Legislature that enacted the statute that is now in question. The statute as passed in 1975 was part of Senate Amendment "297", the Committee Amendment that came out of the State Government Committee. I think many of us as we read legislation rely rather heavily on the statement of fact that accompanies a bill or an amendment, because we do not have time often to read every word of a statute. The statement of fact in that particular amendment is as follows: "The purpose of this amendment is to provide criminal penalties for former members of the classified or unclassified service employed by an executive agency who continue to participate in a substantial way in certain of the governmental areas they were responsible for while state employees." This amendment also applies to former partners of current state employees.

If I had seen the words, officers, or constitutional officers, or Governor or whatever, in that statement of fact, I certainly would not have voted for it. But the language leaves some questions in the minds of many and it needs to be resolved. If issues like this are not resolved, what is the consequence to the quality of the people who will be leaders in serving this State?

I think back to a time when the State Chairman of the Democratic party was a partner in the firm of Verrill and Dana. I remember the time when a partner in Verrill and Dana was the Democratic nominee to be Governor of this state. I remember the time when a partner of Verrill and Dana became a Democratic congressman from the State of Maine. I remember the time when a partner of Verrill and Dana became a judge of the United States District Court from the State of Maine. I remember the time when a classmate and friend of mine, a Democrat leader, a partner, in the firm of Verrill and Dana became a Federal Judge in the second highest echelon of Federal Courts in this country, where he has served with distinction. The Senator of Kennebec, Senator Katz, has brought to mind, the performance of a particular member of a Waterville firm, the Marden and Dubord firm. I remember further back than that, when the father of that Attorney General was a Democrat nominee to be Governor of this State.

The Governor is a constitutional officer, just the same as the Attorney General is a constitutional officer. Do we intend to deny ourselves the services of these outstanding Democrats in the future if men of that caliber come along in leading law firms, or accounting firms, or business firms, in this state? We certainly need to know the answer to this question.

Some of us will remember that a young man named Edmund Muskie, who was a lawyer in Waterville, at one time had a legal association in his law practice. Some of us will remember the clients that he represented were important business interests in the state of Maine, powerful interests. We all remember that firm of Marden and Dubord has represented the leading utilities, the leading banks, the leading insurance companies of this state. I have the list here, so long that I won't read it to you.

I think that we need to face up to the issue of what the statute means. It is not a one-sided issue, politically, it is a political issue because all of our issues are political business of this state. I hope that you will join with me in voting "no" on this motion to postpone this order.

The PRESIDENT: The Chair recognizes the Senator of Penobscot Senator Pray.

Senator PRAY: Mr. President and members of the Senate. As I sat here and listened to the distinguished Senator from Knox, Senator Collins, whose legal understandings are far greater than mine, the choice of his words left me a little troubled, as he talked about the individuals who belong to this prestigious law firm which is in question before us. He asked us, as a Chamber whether or not we are going to preclude the individuals who belong to a law firm such as that, from serving the people of Maine.

I would only point out again, as the Democratic Floor Leader raised the question, whether or not, Charles Cragin could enter into the nomination in the Joint Convention and be elected and serve as Attorney General. The answer to that is that he could definitely do that. The question is how does it relate to the law firm? Just to clarify that we are not attempting to preclude any individual, from serving a constitutional office.

It is the interpretation of the law to include or prevent conflict of interest. As the majority Floor Leader so quickly pointed out editorials, I would also point out that Marshal Stone of the Bangor Daily News also made reference to the fact, that if the law does not apply to the Attorney General, it should. So all editorials are not definitely saying that this is exemplary position, and that is the question as it is put before us.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: Mr. President and present members of the Senate. First, I have a great deal of respect for the judicial wisdom of the good Senator from Knox, Senator Collins. But I would submit, if the good Senator from Knox, Senator Collins, was Mr. Sam Collins, private citizen of the State of Maine, would he be able to submit a question through the Courts, by taking the shortcut such as the procedure that is being used here today for something entirely different that may take effect upon his welfare or the welfare of someone else close to him? I say, "no" and I think that everyone else here agrees.

With respect to the Coffins and Dubords and the Muskies, yes, they have been outstanding citizens in this State, but we, must point out too, that this was all previous or prior to this law that was passed in 1975.

There are other questions that come to my mind, with respect to when tomorrow night the Governor-elect is sworn into office, who is the head of the Attorney General's Department? Do we have a constitutional officer to represent this State in any type of a legal question, that may come before it?

I submit again, I think, in all fairness that we should go to the Joint Convention this afternoon and let the chips fall where they lie, elect an Attorney General. I don't want to cloud the air one bit, with respect to the qualifications of Charles L. Cragin III. I think that everybody in this Legislature knows that he is an extremely able individual.

I believe that we have a very much more im-

portant question before us today and that is, the election of the Attorney General. I think that when we go into Joint Convention, we should ballot and elect one, whether it be Mr. Merrill or whether it be Mr. Cragin.

Therefore, I urge the Senate to vote against the motion of the good Senator from Knox, Senator Collins.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator KATZ: Mr. President, the proposal made by the minority leader sounds so reasonable. Let's go into convention and let's elect an Attorney General. If one did not understand that the Republican nominee will not even be a candidate, will not permit his name to be placed before the convention for election until the cloud is removed, one can just get swallowed by the reasonableness of the approach that is suggested.

The Constitution makes a unique distinction between the other constitutional officers and the Attorney General. With respect to the Secretary of State, the constitution requires us in our first session as an in-coming Legislature to elect a Secretary of State. The Constitution requires us in our first session to go in and elect a Treasurer. But when it comes to the Attorney General, the Constitution makes a distinction. It says that the Attorney General shall be elected biennially and it doesn't say in the first session.

We feel that we have conscientiously tried to pursue the guidance that we feel we got when the Courts wrote back to us in response to the 108th Senate's request. We feel that a Solemn Occasion does exist and we feel that prudent men and women should know, in advance, for all time, as to the applicability of this law. We ask our Democratic friends to join with us in removing this cloud in a timely manner.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator CARPENTER: Mr. President, ladies and gentlemen of the Senate. I might just briefly make a couple of remarks. I guess my first remark would deal with tradition, which has been bailed about a good deal here the last few minutes. We witnessed this morning, whether the spectators here, are aware or not, a good bit of good old Maine tradition, which I don't think is nearly as meaningful as the tradition that we should be taking part in this afternoon in the election of the Attorney General. We witnessed the separate swearing in of the Senator of Franklin, who traditionally has been sworn in separately because years ago he use to stoke State House fires. We sat here for a few minutes while my good friend, Senator Redmond, was taken downstairs, even though he was here as early as any of us this morning, and he was taken downstairs and sworn in separately by the Governor, because traditionally, symbolically, was out of the Chamber stoking the State House fires. This is a tradition that, apparently, is still very much in vogue in this body and this Legislature, but, yet the tradition of electing our constitutional officers is no longer.

I would also submit to the members of this body that the very informal discussions that took place during the pre-legislative conference as to who was going to be the next Attorney General, Secretary of State, State Treasurer, are certainly not formal votes, they aren't binding in any way. In fact, I was lobbied yesterday by a gentleman who, I believe, was a defeated candidate for one of those positions, he doesn't believe that he is out of the running yet, he is still in there scrapping. I don't believe that there has been any formal nomination made of a State Treasurer, at this point.

I have also heard the argument about the great Democratic leaders who have served the State of Maine. I would just reiterate the words of my good floorleader from Cumberland, Senator Conley, and rebut the Bangor Daily News editorial, in that I don't believe this particular

law was in effect when Mr. Dubord served the State of Maine.

I would just ask, I guess, a former member of this body. A friend of all of us, a question that was posed to me, as to why couldn't our good friend from Pittsfield, Mr. Cianchette, come back here the next time the Legislature decides to change truck weight law, we could have the Supreme Court decide on how the axles on all the trucks should be rearranged? Now you chuckle and you smile, but it is a question very similar to the one we are proposing to ask the Supreme Court, if we follow this order that has been proposed.

I would mention to Senator Katz he didn't happen to ask me. I was around in the 107th. I voted for this particular bill. He didn't happen to ask me my intent or what I thought the intent was when I voted on it.

I would say to you, that many times we passed legislation up here and the intent is perceived to be different than what we thought it was when we were voting on the bill. I would refer the Senator from Kennebec Senator Katz, to a rather infamous piece of legislation called L. D. 1994, which a large percentage of the people in this state felt intentionally took away their local control, I think that probably had you asked Senator Katz and the other members of the Legislature that passed that particular statute that if it was their intent, that local control over school funding, be removed that undoubtedly, the question would have been, "oh no, of course not" but yet that bill was repealed because of the perceived intent. I guess I would end by touching upon something that hasn't been really brought out very carefully. Many of the members of this body and the other body are business people, attorneys, and every day when they sit in this chamber, they must make decisions as to conflict of interest and they must decide on their own. They must go home at night and they must wrestle these problems as to whether or not if they vote on a particular issue they are in conflict of interest. I don't think that we are asking the particular individual mentioned in this order anything differently than what we ask ourselves everyday. That is to decide for himself whether he would be in violation of the statute whether he and his former law partners could be in conflict of interest, if he were to become the Attorney General.

This is a question that I have had to ask myself, and all the members of this body have had to ask. I think it is a question that should not be forwarded to Law Courts. I think that I agree 100% with my floorleader that we are subverting the intent of the Solemn Occasion if we go to them on this particular question. I do agree with him and disagree with the good Senator from Kennebec, Senator Katz that this will not be a precedent-setting Solemn Occasion, by any means. I think it certainly will, and we will see many questions going before the Court if they answer this one, which in the past we have seen them refuse to answer, due to lack of Solemn Occasion. So I would respectfully request that the members of this body vote to indefinitely postpone the order presently before us and allow the people involved to decide for themselves whether they are in conflict or not.

They certainly may run for the office, if they are nominated. There are other people that have been mentioned in the press as possible nominees of both parties for the post of Attorney General. If the individuals mentioned in this order are, in fact, nominated in formal Joint Convention, and I certainly think that they have the wherewithal, especially Mr. Cragin having been associated with such a prestigious law firm, certainly has the ability and the intelligence, we all know that, to decide these questions on his own. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator CONLEY: Mr. President and mem-

bers of the Senate. I would like to pose a question through the chair, if I may, to the good Senator from Knox, Senator Collins. That is, who does assume the constitutional power within the Attorney General's office once the Governor-elect is sworn into office tomorrow evening?

The PRESIDENT: Senator Conley posed a question through the Chair to the Senator from Knox, Senator Collins, who may answer if he so desires. Is the Senator ready for the question? A Roll Call has been requested. Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen a Roll Call is Ordered.

The pending question before the Senate, is the Motion by the Senator from Cumberland, Senator Conley, that this order be Indefinitely Postponed.

A yes vote will be in favor of Indefinite Postponement.

A nay vote will be opposed.

The Doorkeepers will secure the chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEAS—Carpenter, Clark, Conley, Danton, Farley, Martin, Minkowsky, Najarian, O'Leary, Pray, Silverman, Trafton, Usher  
 NAYS—Ault, Chapman, Collins, Devoe, Emerson, Gill, Hichens, Huber, Katz, Lovell, McBrearty, Perkins, Pierce, Redmond, Shute, Sutton, Teague, Trotzky, Sewall

A Roll Call was had.

13 Senators having voted in the affirmative and 19 Senators in the negative, the Motion to Indefinitely Postpone does not prevail.

The Order was passed.

On motion by Senator Conley of Cumberland, ORDERED, that the rules of the Senate of the One Hundred and Eighth Legislature be the rules of the Senate.

Which was Read and Passed.

On motion by Senator Perkins of Hancock, ORDERED, the House concurring, that 3,500 copies of the Governor's Message be printed. (SP 010)

Which was Read and Passed.

Sent down forthwith for concurrence

On motion by Senator Carpenter of Aroostook,

ORDERED, the House concurring, that the Secretary of the Senate and the Clerk of the House, respectively, purchase such services, supplies and equipment as may be needed to carry on business of the Senate and the House, respectively; and be it further

ORDERED, that in the interim when the Legislature is not in session, purchases of equipment by the Clerk of the House or the Secretary of the Senate shall be subject to the approval of the Legislative Administrative Director. (SP 011)

Which was Read.

On motion by Senator Katz of Kennebec, talked pending passage.

On motion by Senator Chapman of Sagadahoc,

ORDERED, the House concurring, that there be prepared, after adjournment of the present session, by the Legislative Information Officer, a Register of all the Bills and Resolves considered by both branches of the Legislature, showing the history and final disposition of each Bill and Resolve and that there be printed 600 copies of the same. The Legislative Information Officer shall mail a copy of the Register to each member and officer of the Legislature and the State Law and Legislative Reference Library shall receive such number

of copies as may be required. (SP 012)

Which was Read and Passed.

Sent down forthwith for concurrence.

On motion by Senator Redmond of Somerset, ORDERED, the House concurring, that the Clerk of the House and the Secretary of the Senate be authorized to furnish 100 15¢ postage stamps for each member of the House and Senate for the purpose of distributing various reports of the Departments of State and other public documents such as they may desire to mail to the citizens of the State. (SP 013)

Which was Read and Passed.

Sent down forthwith for concurrence.

On motion by Senator Minkowsky of Androscoggin,

ORDERED, the House concurring, that the Legislative Finance Officer be authorized and directed to prepare weekly, from expense accounts to be submitted to him by the members of the Senate and House, expense rosters showing the entitlement of each member for meals allowance and lodging reimbursement and to obtain approval thereof by the President of the Senate and the Speaker of the House, respectively, and deliver the same to the State Controller for processing and payment, in the manner and form recommended by the Joint Interim Committee of the 101st Legislature created to study and report on a method of implementing the administration of the provision of law relating to the mileage and expenses for members of the Legislature; and be it further

ORDERED, that the Legislative Finance Officer be authorized and directed to provide the forms necessary for such purpose and provide suitable space in his office for the filing and safekeeping of all such expense accounts and other papers and records pertaining thereto. (SP 014)

Which was Read and Passed.

Sent down forthwith for concurrence.

On Motion by Senator Farley of York, ORDERED, the House concurring, that telephone service may be provided for each member of the Senate and House, and each representative from the Indian Tribes at the Legislature for a reasonable number of calls, of reasonable duration, as determined by the President of the Senate as to members of the Senate and the Speaker of the House as to members of the House and the representatives from the Indian Tribes, to points within the limits of the State of Maine, the privilege granted to be a personal privilege, not to be exercised by other than the members or representatives, that each member of the Senate and House, and each representative from the Indian Tribes at the Legislature, may be provided with a credit card under the direction of the Secretary of the Senate and Clerk of the House, respectively, the cost of this service to be paid to the New England Telephone Company at regular tariff rates; and be it further

ORDERED, that the President of the Senate or the Speaker of the House may, upon a finding of abuse of the privilege of telephone service by a member of the Senate or a member of the House, respectively, temporarily suspend or terminate the privilege of said telephone service to that member.

(S. P. 15)

Which was Read and Passed.

Sent down forthwith for concurrence.

On motion by Senator Sutton of Oxford, ORDERED, the House concurring, that there be paid to the members of the Senate and House as advances on account of compensation established by statute, the amount of Three Hundred and Sixty Dollars (\$360) bi-weekly, according to lists certified to the State Controller by the President of the Senate and Speaker of the House, respectively.

(S. P. 16)

Which was Read and Passed.  
Sent down forthwith for concurrence.

On motion by Senator Shute of Waldo, ORDERED, the House concurring, that the Secretary of the Senate be authorized to furnish to the Superintendent of Public Printing, postage on all correspondence relative to advertising committee hearings during the present session, same to be charged to legislative expense.

(S. P. 18)

Which was Read and Passed.  
Sent down forthwith for concurrence.

On motion by the Senator Pierce of Kennebec,

ORDERED, the House concurring, that the Secretary of the Senate and Clerk of the House jointly prepare the Senate and House Register and that 40,000 copies be printed for the use of the Legislature.

(S. P. 17)

Which was Read and Passed.  
Sent down forthwith for concurrence.

On motion by Senator Najarian of Cumberland,

ORDERED, the House concurring, that three hundred twenty-five (325) copies of the Legislative Record for the session of 1979 be printed, one copy for each of the members of the Senate, House of Representatives, the Secretary of the Senate and Clerk of the House, and the remainder to be deposited with the State Law Librarian for exchange and library use; and be it further

ORDERED, that suitable index be prepared for such Legislative Record, under the direction of the Director of Legislative Research.

(S. P. 19)

Which was Read and Passed.  
Sent down forthwith for concurrence.

On motion by Senator Lovell of York, ORDERED, the House concurring, that any Town or City Clerk or Board of County Commissioners may, upon written request to the Document Clerk receive without charge, copies of all printed bills, so that there may be available to the public during the legislative session a complete and convenient file of all printed bills.

(S. P. 20)

Which was Read and Passed.  
Sent down forthwith for concurrence.

On motion by Senator Martin of Aroostook, ORDERED, the House concurring, that the rooms in the State House and State Office Building used by the One Hundred and Eighth Legislature as hearing rooms be reserved for hearing rooms for the One Hundred and Ninth and succeeding Legislatures and be released for other purposes only upon approval by the President of the Senate and Speaker of the House.

(S. P. 21)

Which was Read and Passed.  
Sent down forthwith for concurrence.

On motion by Senator Devoe of Penobscot, ORDERED, the House concurring, that all printing and binding authorized by the Legislature shall be under the direction of the Secretary of the Senate and Clerk of the House.

(S. P. 22)

Which was Read and Passed.  
Sent down forthwith for concurrence.

On motion by Senator Ault of Kennebec, ORDERED, that the subordinate officers of the Senate be appointed as follows: by the President, a Secretary to the President; by the Secretary, a reporter, an assistant Postmaster, four secretaries, and three stenographers, one of whom will operate the Public Address System.

Which was Read and Passed.

On motion of Senator O'Leary of Oxford, ORDERED, that the Secretary of the Senate be authorized to purchase five thousand (5,000) copies of the folder entitled "This Is Your Legislature." and five thousand (5,000) copies of the pamphlet entitled "How a Bill Becomes a Law in Maine," from the League of Women Voters of Maine for the use members of the Senate.

Which was Read and Passed.

On motion by Senator Collins of Knox, ORDERED, that the Secretary of the Senate prepare and have printed five hundred diagrams of the Senate Chamber for the use of the Senate.

Which was Read and Passed.

On motion by Senator Danton of York, ORDERED, that the Secretary of the Senate be directed to secure uniforms for the subordinate officers of the Senate.

Which was Read and Passed.

On motion by Senator Huber of Cumberland, ORDERED, that the Secretary of the Senate be authorized to invite the clergymen of Augusta, Hallowell and Gardiner to officiate as Chaplains of the Senate, or to invite clergymen from other areas of the State as requested by any member of the Senate, and be it further

ORDERED, that all clergymen acting as Chaplains of the Senate shall receive \$10.00 for each officiation. The same is to be approved by the Secretary of the Senate.

Which was Read and Passed.

On motion by Senator Clark of Cumberland, ORDERED, that the Official Reporter of the Senate be authorized to procure the services of an assistant reporter during the present session.

Which was Read and Passed.

On motion by Senator Teague of Somerset, ORDERED, that the Senate Majority Floorleader and the Senate Minority Floorleader be authorized to hire one secretary each.

Which was Read and Passed.

On motion by Senator Pray of Penobscot, ORDERED, that all Bills and Resolves carrying or requiring an appropriation or involving a loss of revenue that are in order to be passed to be enacted, or finally passed, shall, at the request of a member of the Committee on Appropriations and Financial Affairs, be placed on a special calendar to be called up for consideration only by a member of that committee.

Which was Read and Passed.

On motion by Senator Trotzky of Penobscot, ORDERED, that all Bills and Resolves carrying or requiring an appropriation of highway revenue or involving a loss of highway revenue that are in order to be passed, to be enacted, or finally passed, shall, at the request of a member of the Committee on Transportation, be placed on a special calendar to be called up for consideration only by a member of that committee.

Which was Read and Passed

On motion by Senator Trafton of Androscoggin,

ORDERED, that the President of the Senate is authorized, at his discretion, to permit radio or sound television film or live television, or any two or three of these communication media, on the floor of the Senate while the Senate is in session.

Which was Read and Passed.

On motion by Senator Gill of Cumberland, ORDERED, that the Senate hold one session a day commencing at 10 o'clock in the forenoon until otherwise ordered.

Which was Read and Passed.

On motion by Senator Pierce of Kennebec, ORDERED, that the Secretary of the Senate be directed to furnish each member of the Senate, during the present session with two daily newspapers printed in the State, as each member may direct.

Which was Read and Passed.

Senator Pray of Penobscot was granted unanimous consent to address the Senate off the record.

On Motion by Senator Pierce of Kennebec. Recessed until 3:55 this afternoon.

Recess

After Recess

The Senate called to order by the President.

THE PRESIDENT: Would there be any objection from the Senate, if the Governor were to go tonight and swear Senator-elect Cote in? The Chair hears no objection, I will accept the Governor's kind offer to do this.

On motion by Senator Pierce of Kennebec, recessed until 7 o'clock in the evening.

Recess

After Recess

The Senate called to Order by the President.

Out of Order and Under suspension of the rules, the Senate voted to take up the following:

**Communication**  
State of Maine  
Supreme Judicial Court  
Portland, Maine 04112  
January 3, 1979

Mrs. May M. Ross  
Secretary of the Senate  
State House  
Augusta, ME 04333  
Dear Mrs. Ross:

I have the honor to transmit herewith the response of the Justices of the Supreme Judicial Court given pursuant to the Senate's request for an advisory opinion of the Justices which was received January 3, 1979.

Sincerely yours,  
VINCENT L. MCKUSICK

ANSWER OF THE JUSTICES

To the Honorable Senate of the State of Maine: In compliance with the provisions of Article VI, section 3 of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, respectfully submit the following reply to the questions propounded to us by the Honorable Senate on January 3, 1979, which were received by us on January 3, 1979.

The Justices of the Supreme Judicial Court of Maine have historically shown a conscientious desire to answer questions propounded to them by the executive or legislative departments of government pursuant to Article VI, section 3 of the Constitution of Maine! The Justices have recognized, however, that upon receipt of questions from one of the other branches of government, it is first their constitutional duty to investigate with care whether in the given situation the Constitution denies them the right to answer the questions propounded. In making that investigation the Justices have been keenly aware that the provision of the Maine Constitution empowering them to give advisory opinions to the other branches represents an unusual and therefore limited exception to two overriding principles binding upon the judiciary. First, the Constitution of Maine in Article III expressly declares the foundational doctrine of separation powers; the executive, leg-

islative, and judicial departments of government, and the powers thereof, are strictly separated<sup>2</sup>. Second, by an otherwise universal rule the judicial power may be exercised only in an actual case and controversy; that is, only in a concrete fact situation involving adversary litigants who have an appropriate interest in developing the relevant facts and arguing the applicable legal principles. In light of those principles the federal government and all but a few states do not permit advisory opinions at all.

<sup>1</sup> Article VI, section 3 reads as follows:

"Section 3. The Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives."

<sup>2</sup> Article III, entitled "Distribution of Powers," reads as follows:

"Section 1. The powers of this government shall be divided into three distinct departments, the legislative, executive and judicial.

"Section 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted."

Recognizing the extraordinary nature of advisory opinions, the draftsmen of our Maine Constitution, in 1819, following the model of the Massachusetts Constitution of 1780, empowered the Justices of the Supreme Judicial Court to render such opinions only "upon important questions of law" and only "upon solemn occasions"<sup>3</sup> and only "when requested by the Governor, Council, Senate or House of Representatives."<sup>4</sup> Even when the Justices are constitutionally empowered to render an advisory opinion, that opinion has no precedential value and no conclusive effect as a judgment upon any party, and is not binding upon even the individual Justices rendering it in any subsequent litigated matter before their Court.<sup>5</sup>

<sup>3</sup> While the phrase "solemn occasion" is not expressly defined in the Constitution, it has been often interpreted, usually in negative fashion, in various Opinions of the Justices in both Maine and Massachusetts.

<sup>4</sup> The Council was eliminated as an authorized requesting body by Amendment XCIV to the Maine Constitution, effective November 18, 1964.

<sup>5</sup> *Martin v. Maine Savings Bank*, 154 Me. 259, 147 A.2d 131 (1958).

Turning from those general principles to the questions propounded to us on January 3, 1979, we regretfully conclude that constitutional limitations on our power to advise another branch of government in nonlitigated matters prevent us from answering. If we were to address and express an opinion on the merits of those questions, we would in several respects do violence to the limitations imposed upon us by the Constitution of Maine as previously construed on numerous occasions.

Although the Senate, a body constitutionally authorized to request advisory opinions, has propounded the questions before us, the Senate has no function or duty to perform in regard to the subject matter of the questions, namely, the election of the Attorney General. The Attorney General is chosen neither by the Senate nor by the House nor by a joint session of the Senate and House. Rather, under the Maine Constitution, Article IX, section 11, the Attorney General is chosen "by joint ballot of the **Senators and Representatives in convention.**" (Emphasis added.) Thus, the Senate has asked us questions in regard to a function constitutionally committed not to the Senate, but to the convention of those individuals who have qualified as Senators and Representatives. The Constitution does not empower that convention to address questions to the Justices in regard to

its essentially political duty of electing the so-called constitutional officers, including the Attorney General. In a similar circumstance in 1933, the Justices advised the Senate that the Constitution of Maine did not authorize the Justices to answer questions propounded by the Senate that related to the powers and duties, not of the Senate, but of a proposed constitutional convention.<sup>6</sup> We must do the same here.

Furthermore, on its face, the statute that is the subject of the questions, 5 M.R.S.A. § 15(2), while imposing prohibitions and possible penalties upon any former partner of "a person who is currently a member of the classified or unclassified service employed by an executive agency," whoever such "person" is by the statute intended to be, imposes no prohibitions or penalties whatever upon that person himself. Thus, even if such "person" includes the Attorney General, the questions propounded do not relate to the legal qualifications of that person to discharge the duties of that office. Rather, the questions seek the opinion of the Justices as to possible peripheral consequences on his former partners of such person's serving as Attorney General. Also, the outcome of the political process in the convention of Senators and Representatives in choosing among the potential candidates for the office is still hidden in the unknown future. Thus, whether the application of 5 M. R. S. A. § 15(2) will ever come in issue remains in the realm of speculation. As the Justices stated in a comparable situation, the questions here posed are "at a stage yet too tentative, hypothetical and abstract to have achieved the 'live gravity' necessary for the existence of a 'solemn occasion'."

<sup>6</sup> *Opinion of the Justices*, 132 Me. 491, 167 A. 176 (1933). See also *Opinion of the Justices*, 147 Me. 410, 105 A.2d 454 (1952).

<sup>7</sup> *Opinion of the Justices*, Me., 330 A.2d 912, 915 (1975).

While we recognize that some of those charged with the responsibility of choosing an Attorney General may feel inhibited in making a choice because of the circumstances narrated in the preamble to the questions propounded, this fact does not give rise to the constitutional occasion authorizing us to answer them. We find directly relevant the point made in 1975 by the Justices<sup>8</sup> in responding to questions propounded by the Governor, in which he asserted that "the questioned statement of policy by a majority of the Executive Council 'inhibit(ed) or prevent(ed)' his taking action..." to fill a vacancy on the Public Utilities Commission. There the Justices said that since the Governor nevertheless continued to have "unlimited" statutory authority to nominate a candidate of his choice to fill the vacancy, "the matter was one of 'future and hypothetical concern until the Governor asserts his intention to nominate a person who does not meet the particular standards which the Governor understands the Council demands.'" By analogy, in the present situation the Senators and Representatives in convention still have unlimited constitutional authority to make their choice of an Attorney General. In this regard it adds nothing to the Justices' constitutional power that, as narrated in the preamble to the questions propounded, one of the candidates for Attorney General has announced his personal decision, for whatever reasons may motivate him, to refuse to accept election as Attorney General if doubt persists as to the applicable scope of 5 M.R.S.A. § 15(2). As we have already explained whether or not that statute has applicability to former partners of the Attorney General does not bear on the legal qualifications of the person chosen as Attorney General to serve in that office. The personal decision of a candidate not to accept election as Attorney General for reasons which are unrelated to his legal qualifications to serve in that office must be deemed a matter essentially private and not sufficient to generate the "solemn occasion" required by section 3 of Article VI of the Constitution of Maine.

<sup>8</sup> *Opinion of the Justices*, Me., 339 A.2d 483, 492 (1975).

Finally, at their root, all of the questions seek from the Justices an interpretation of an existing statute. This creates grave doubts as to the existence of a solemn occasion. First, the Legislature in any event may by amendatory enactment eliminate any ambiguity it finds in an existing statute. Such amendment would have the force of law.<sup>9</sup> An advisory opinion has no such force. It is merely the opinion of the individual Justices, not the binding decision of the Supreme Judicial Court sitting as the Law Court. Second, an advisory opinion interpreting an existing statute, though not having the force of law, may jeopardize private rights and public interests created by such statute.<sup>10</sup> As the Justices said in 1936, "any expression of opinion might prejudice the question before the arising of any occasion for its legal determination."<sup>11</sup>

<sup>9</sup> *Opinion of the Justices*, Me., 355 A.2d 341, 390 (1976); *Opinion of the Justices*, Me., 339 A.2d 483, 488 (1975). See also *Answer of the Justices*, — Mass. —, 374 N. E. 2d 1345, 1346-47 (1978).

<sup>10</sup> *Answer of the Justices*, — Mass. —, 374 N. E. 2d 1345, 1347 (1978). See also *Opinion of the Justices*, 125 Me. 529, 539, 133 A. 265, 270 (1926) (*Answer of Dunn, J.*, later *Dunn, C. J.*).

<sup>11</sup> *Opinion of the Justices*, 135 Me. 519, 522, 191 A. 485, 487 (1936).

For all these reasons, we conclude that we lack constitutional power, and therefore must respectfully decline, to answer the questions propounded.

Dated: January 3, 1979.

VINCENT L. MCKUSICK  
Chief Justice  
CHARLES A. POMEROY  
SIDNEY W. WERNICK  
JAMES P. ARCHIBALD  
THOMAS E. DELAHANTY  
EDWARD S. GODFREY  
DAVID A. NICHOLS  
Associate Justices

Which was Read and Ordered Placed on File.

Senator Katz of Kennebec was granted unanimous consent to address the Senate off the record.

On motion by Senator Pierce of Kennebec, Recessed until January 4, 1979 at 11:30 o'clock in the morning.

(Recessed)