REVISED STATUTES

OF THE

STATE OF MAINE

1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 1

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

Constitution of the State of Maine as Amended

ARTICLE I.

DECLARATION OF RIGHTS.

§ 1. Equality and rights of man.

The retail sale of gasoline per se is not a business so affected with the public interest that it warrants exercise of police power without evidence of particular evil. State v. Union Oil Co., 151 Me. 438, 120 A. (2d) 708.

Section 200A of chapter 100 restricting retailers of motor fuels as to the size of price signs and where price signs may be located on their premises was held unconstitutional as not being reasonably necessary for the accomplishment of any real or legitimate purpose in the exercise of the police power and as an unnecessary and oppressive restriction upon a lawful business. State v. Union Oil Co., 151 Me. 438, 120 A. (2d) 708.

Statute relieving municipality from liability for snow or ice on sidewalk.—Chapter 96, § 92, which relieves a municipality from liability to an action for damages to any person on foot on account of snow or ice on any sidewalk or crosswalk, is not unconstitutional as being in violation of this section. Verreault v. Lewiston, 150 Me. 67, 104 A. (2d) 538.

Removal of intent clause from Unfair Sales Act.—The legislature in attempting to remove the wrongful or criminal intent from the present Unfair Sales Act (R. S. c. 184) would destroy the constitutional foundation for the act which lies within the police power. Opinion of the Justices, 152 Me. 458, 132 A. (2d) 47.

The "Sunday Closing Law," R. S. c. 134, §§ 38 and 38-B, does not violate the rights guaranteed under this section. State v. Fantastic Fair, 158 Me. 450, 186 A. (2d) 352.

Cited in Central Maine Power Co. v. Public Utilities Comm., 156 Me. 295, 163 A. (2d) 762; Opinion of the Justices, 157 Me. 152, 170 A. (2d) 652; Swed v. Inhabitants of Town of Bar Harbor, 158 Me. 220, 182 A. (2d) 664.

§ 4. Freedom of speech and publication; libel.

Intent of protection of freedom of the press.—The protection of the freedom of the press is intended primarily to safeguard the public in its right to the circulation of information. United Interchange, Inc. v. Harding, 154 Me. 128, 145 A. (2d) 94.

Historically, the struggle for the freedom of the press was primarily directed against the power of the licensor and was addressed to obtaining liberty to publish "without a license what formerly could be published only with one." United Interchange, Inc. v. Harding, 154 Me. 128, 145 A. (2d) 94.

The liberty of the press is not of course license to libel or to print the scandalous or the immoral. Rather does the freedom relate to "previous restraints" before publication as well as to protection from penalties for publishing what is harmless to the public welfare. United Interchange, Inc. v. Harding, 154 Me. 128, 145 A. (2d) 94.

§ 5. Unreasonable searches prohibited; search warrants.

The amendment of a complaint and warrant as to a material matter must be supported by oath or affirmation under this section and R. S. c. 145, § 14. State v. Chapman, 154 Me. 53, 141 A. (2d) 630.

There can be no essential difference between accusations made in an original complaint and accusatory factual assertions later added by amendment to the complaint so far as the sanction of an oath required by our constitution and our statute is concerned. The same inviolable right of the respondent is affected in the same manner by the latter and added charges as by the former. The deterring influence of the purgative of an oath upon a revised complaint is just as imperative to keep impregnable a respondent's rights as it is upon the original complaint. State v. Chapman, 154 Me. 53, 141 A. (2d) 630.

§ 6. Rights of persons accused.

I. GENERAL CONSIDERATION.

Statute creating game preserve and restricting the carrying of firearms or hunting therein does not violate this section.— R. S. c. 37, §§ 148, 149, as amended, creating a game preserve and prohibiting, except as provided, the carrying of firearms or hunting within the limits of a state game preserve, are not unconstitutional as violating this section. State v. McKinnon, 153 Me. 15, 133 A. (2d) 885.

Right to counsel may be waived.—A defendant fully aware of his right to the assistance of counsel and of the propriety of requesting the court for it, may waive such right. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Applied in Opinion of the Justices, 151 Me. 1, 117 A. (2d) 53.

Quoted in Opinion of the Justices, 152 Me. 440, 131 A. (2d) 904.

Cited in State v. Union Oil Co., 151 Me. 438, 120 A. (2d) 708; Opinion of the Justices, 155 Me. 125, 152 A. (2d) 494; Central Maine Power Co. v. Public Utilities Comm., 156 Me. 295, 163 A. (2d) 762.

II. RIGHT TO DEMAND NATURE AND CAUSE OF ACCUSATION.

And facts must be stated, etc.

In accord with original. See State v. Ward, 156 Me. 59, 158 A. (2d) 869.

If statute sets out facts, etc.

In accord with 5th paragraph in original. See State v. Ward, 156 Me. 59, 158 A. (2d) 869.

It is within the power of legislatures to prescribe the form of indictments and such forms may omit averments regarded as necessary at common law. But the legislature, while it may simplify the form of indictment, cannot dispense with the necessity of placing therein a distinct presentation of the offense containing allegations of all of its elements. State v. Popolos, 150 Me. 46, 103 A. (2d) 511.

Indictment for reckless driving.—See note to c. 22, § 148.

III. RIGHT TO BE CONFRONTED BY WITNESSES.

Waiver of right of confrontation. — Waiver of right to trial relinquishes by inclusion the privilege of being confronted by the witnesses against the accused and the right to have compulsory process for obtaining witnesses in his favor. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

IV. RIGHT TO SPEEDY TRIAL.

This provision has been implemented by statute in R. S. c. 148, § 9. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

Right to speedy trial, etc.

The right to a speedy trial is a personal privilege which the defendant may waive. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

The right to a speedy trial may be waived by a defendant. It is a personal privilege and must be claimed. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Delays caused by acts of the defendant himself constitute a waiver of his right to a speedy trial. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

Hence, the delay which occurred while defendant was a fugitive from justice outside the state, even though he had no knowledge of the pendency of an indictment, was the result of his own acts and constituted a waiver of his right to trial during that period. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

Proper method for raising question of violation of right to speedy trial is by motion addressed to the court at which the indictment is pending. Couture v. State, 156 Me. 231, 163 A. (2d) 646.

Violations of constitutional rights and waiver thereof are questions of law to be decided by the court within its discretion. Couture v. State, 156 Me. 231, 163 A. (2d) 646.

V. RIGHT TO TRIAL BY JURY.

Accused may waive his right to trial by a plea of guilty to an indictment and the court may accept such a plea. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

VI. PRIVILEGE AGAINST SELF-INCRIMINATION.

Intent of section. — The great constitutional safeguard against self-incrimination was never intended to be used as a means of avoiding the disclosure of the truth by witnesses who only pretend a fear of proving themselves guilty of crime. Hinds v. John Hancock Mutual Life Ins. Co., 155 Me. 349, 155 A. (2d) 721.

Privilege is personal and, etc.

The privilege against self incrimination is personal and may be waived. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert.

den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Privilege to be claimed on question by question basis.—A witness should not be accorded the privilege against self-incrimination as to all testimony, but may properly be expected to claim the privilege on a question by question basis. Hinds v. John Hancock Mutual Life Ins. Co., 155 Me. 349, 155 A. (2d) 721.

Ruling should not exclude question.—The ruling when the privilege against self-incrimination is claimed should not be to exclude the question if it is otherwise proper and admissible, but merely to grant or refuse the request that the witness not be compelled to answer. Hinds v. John Hancock Mutual Life Ins. Co., 155 Me. 349, 155 A. (2d) 721.

VII. "LAW OF THE LAND" OR "DUE PROCESS".

Provision affirms right to trial according to process, etc.

In accord with 1st paragraph in original. See Dwyer v. State, 151 Me. 382, 120 A. (2d) 276.

The "Sunday Closing Law," R. S. c. 134, §§ 38 and 38-B, does not violate the rights guaranteed under this section. State v. Fantastic Fair, 158 Me. 450, 186 A. (2d) 352.

Right to counsel.—See Pike v. State, 152 Me. 78, 123 A. (2d) 774.

§ 7. Presentment or indictment; juries.

This section was meant to be adamant in making indispensable grand jury consideration as a sine qua non to prosecution for an infamous crime, as such prosecution might be instigated and furthered by the aggressive sovereign state. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

It is not violated by R. S. c. 147, § 33, which provides for the waiver of indictment. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Right to presentment or indictment not a jurisdictional necessity.—The juxtaposition of the second with the first sentence of this section does not manifest an intention of the drafters of the state constitution to tabulate the right to grand jury presentment or indictment for infamous crime as a jurisdictional necessity. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Cheating by false pretenses is infamous.—The crime punished by R. S. c. 33, § 11, that of cheating by false pretenses, is "infamous" within the meaning of this section. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

§ 8. Double jeopardy.

Protection against former or double jeopardy is a basic and fundamental right. State v. Sanborn, 157 Me. 424, 173 A. (2d) 854.

But it may be waived. — The protection against double jeopardy may be waived. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Jeopardy begins when the jury is impanelled and sworn. State v. Sanborn, 157 Me. 424, 173 A. (2d) 854.

And when jeopardy has once attached, the defendant is entitled to a verdict from the jury of either guilty or acquittal. State v. Sanborn, 157 Me. 424, 173 A. (2d) 854.

Otherwise he should ordinarily be discharged.—If the case is withdrawn by the court from the jury without the defendant's consent, except for what has been termed by the courts urgent, manifest, or imperious necessity, he should be discharged. State v. Sanborn, 157 Me. 424, 173 A. (2d) 854.

And he may plead former jeopardy if placed on trial again on the same indictment or for the same offense. State v. Sanborn, 157 Me. 424, 173 A. (2d) 854.

Thus, mistrial will sustain plea of former jeopardy.—A plea of former jeopardy was sustained as a bar to further prosecution where, after the jury had been empanelled and evidence introduced, the trial judge, over defendant's objections, ordered a mistrial on the ground that the admission of certain evidence constituted error, prejudicial to the defendant, which could not be corrected by an instruction to the jury. State v. Sanborn, 157 Me. 424, 173 A. (2d) 854.

Unless cogency for mistrial becomes sufficiently impanelling. — When the cogency for a mistrial becomes sufficiently impanelling and where a response to it cannot be justly protested by the defendant, a second trial does not violate the latter's fundamental privilege as guaranteed by this section. State v. Sanborn, 157 Me. 424, 173 A. (2d) 854.

But a misapprehension in judicial administration is not itself sufficient to war-

rant a mistrial and to nullify jeopardy. State v. Sanborn, 157 Me. 424, 173 A. (2d) 854.

Conditions of urgent necessity warranting discharge of jury but barring plea of former jeopardy. — Certain conditions, if arising in the trial of a case, have come to be well recognized as constituting that urgent necessity which will warrant the discharge of a jury, and if they appear of record will bar a plea of former jeopardy: (1) the consent of the defendant, (2) illness of the court, a member of the jury, or the defendant, (3) the absenting from the trial of a member of the panel or of the defendant, (4) where the term of court is fixed in duration and ends before verdict, (5) where the jury cannot agree. State v. Sanborn, 157 Me. 424, 173 A. (2d) 854.

Conviction of aiding child delinquency no bar to indictment for statutory rape.— Plea of former jeopardy was properly overruled where it was raised in bar to an indictment accusing defendant of having unlawfully and carnally known and abused a female child of 12 years of age (R. S. c. 130, § 10) on the basis of a prior conviction in a municipal court of having aided in the delinquency of a child (R. S. c. 138, § 13-A). Statutory rape is aiding juvenile delinquency plus the different criminal factor of sexual intercourse. Correlatively, statutory rape and aiding child delinquency are the greater and lesser offenses, one being a felony the other a misdemeanor. The municipal court which adjudicated the misdemeanor had no jurisdiction of the felony; thus in the delinquency proceeding, the defendant was not in jeopardy for statutory rape. State v. Barnette, 158 Me. 117, 179 A. (2d) 800.

§ 9. Sanguinary laws prohibited; excessive bail and fines; cruel and unusual punishment.

Section inapplicable to increased assessments. — The increased assessments invoked by R. S. c. 29, § 17 IV. C. were held not to be penalties and thus this section did not apply. Maine Employment Security Comm. v. Charest, 158 Me. 43, 177 A. (2d) 654.

§ 10. No bail in capital offences; habeas corpus.

Cited in Opinion of the Justices, 157 Me. 187, 170 A. (2d) 660.

§ 11. Bills of attainder; ex post facto laws; impairment of contracts; corruption of blood and forfeiture of estates.

Quoted in First Nat. Bank of Boston v. Maine Turnpike Authority, 153 Me. 131. 136 A. (2d) 699; McGary v. Barrows, 156 Me. 250, 163 A. (2d) 747.

§ 13. Suspension of laws.

The local option provision in the "Sunday Closing Law," R. S. c. 134, § 38-B, which enables a locality to increase the number of "exempt" stores but not to decrease it, does not violate the provisions of this section. State v. Fantastic Fair, 158 Me. 450, 186 A. (2d) 352.

§ 16. Keeping and bearing arms.

Statute creating game preserve and restricting the carrying of firearms or hunting therein does not violate this section.— R. S. c. 37, §§ 148, 149, as amended, creating a game preserve and prohibiting, except as provided, the carrying of firearms or hunting within the limits of a state game preserve, are not unconstitutional as violating this section. State v. McKinnon, 153 Me. 15, 133 A. (2d) 885.

§ 19. Rights of redress for injuries.

Quoted in Dwyer v. State, 151 Me. 382, 120 A. (2d) 276; Hughes v. Black, 156 Me. 69, 160 A. (2d) 113.

Cited in Central Maine Power Co. v. Public Utilities Comm., 153 Me. 228, 136 A. (2d) 726; Central Maine Power Co. v. Public Utilities Comm., 156 Me. 295, 163 A. (2d) 762; Opinion of the Justices, 157 Me. 104, 170 A. (2d) 647.

§ 21. Taking private property for public use.

I. GENERAL CONSIDERATION.

The legislature may entrust the power of eminent domain to instruments of its choosing, such as a public body corporate

and politic exercising public and essential governmental functions. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

Statute creating game preserve and restricting the carrying of firearms or hunting therein does not violate this section.— R. S. c. 37, §§ 148, 149, as amended, creating a game preserve and prohibiting, except as provided, the carrying of firearms or hunting within the limits of a state game preserve, are not unconstitutional as violating this section. State v. McKinnon, 153 Me. 15, 133 A. (2d) 885.

Sources of jurisdiction and due process for injuries. — The warrant of security under this section and R. S. c. 23, §§ 19 to 23, together with established court precedents, supply exhaustive jurisdiction and adequate due process of law for injuries proximately resulting from property condemnation and road grade changes. Opinion of the Justices, 157 Me. 104, 170 A. (2d) 647.

A person may waive the right to compensation for his private property taken for public uses. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den, 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Applied in Williams v. State Highway Comm., 157 Me. 324, 172 A. (2d) 625.

Quoted in Opinion of the Justices, 152 Me. 440, 131 A. (2d) 904.

Cited in Opinion of the Justices, 155 Me. 125, 152 A. (2d) 494; Central Maine Power Co. v. Public Utilities Comm., 156 Me. 295, 163 A. (2d) 762.

III. PROPERTY CAN BE TAKEN ONLY FOR PUBLIC USE.

A. In General.

And is determined by the courts.

In accord with 4th paragraph in original. See Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

Courts must consider existing conditions.—In determining whether a given use is public in nature, the court must consider existing conditions. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

B. What Constitutes Public Use.

State constitution is not broader than constitution of U. S. — The provisions of the state constitution are not of a broader scope than the fourteenth amendment to the United States constitution with respect to the scope of "public use." Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

Public use and public advantage are distinguished. — The principle that "public use" in eminent domain means use by the public, or employment by the public, in contrast with public advantage, is well and firmly established. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

It is not necessary that an active use be contemplated in a taking by eminent domain. The use may be negative in character. The prevention of evil may constitute a use, and as here a public use. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

Slum clearance of blighted areas is public use.—Slum clearance of blighted areas for the public health, morals, safety and welfare is a "public use" within the meaning of the constitution. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

But redevelopment of city is not.— Taken alone, the redevelopment of a city is not a "public use" for which either taxation or taking by eminent domain may properly be utilized. Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

IV. TAKING MUST BE REQUIRED BY PUBLIC EXIGENCIES.

And its determination is final, etc.

In accord with 1st paragraph in original. See Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841.

ARTICLE II.

ELECTORS.

§ 4. **Time of elections; terms; absentee voting.**—The election of senators and representatives shall be on the Tuesday following the first Monday of November biennially forever and the election of governor shall be on the Tuesday following the first Monday of November every four years. The legislature under proper enactment shall authorize and provide for voting by citizens of the state absent therefrom in the armed forces of the United States or of this state and for voting by other citizens absent or physically incapacitated for reasons deemed sufficient. (Amendment LXXXIII, proclaimed September 19, 1957; amendment LXXXIV, proclaimed September 19, 1957.)

Effect of amendments. — This section was amended on two occasions in 1957. Amendment LXXXIII, Chapter 94, Resolves of 1957, changed the date of the

general election from the "second Monday of September" to the "Tuesday following the first Monday of November." Amendment LXXXIV changed the term of governor from "two" years to "four" years.

ARTICLE III.

DISTRIBUTION OF POWERS.

§ 1. Division of powers.

All the judicial power in this state has been distributed and vested by the constitution and complementary legislative acts thereunder, and none has been left residing in the legislature save for impeachment jurisdiction. Opinion of the Justices, 157 Me. 104, 170 A. (2d) 647.

Chapter 41, § 111-G, does not violate section.—Under R. S. c. 41, § 111-G, relating to the organization of school administrative districts, there is no unlawful delegation of legislative power to the school district commission in violation of this section. McGary v. Barrows, 156 Me. 250, 163 A. (2d) 747.

Nor does c. 27-A, § 6.—Provisions of R. S. c. 27-A, § 6, permitting suspension of the execution of a sentence, do not conflict with this section. State v. Blanchard, 156 Me. 30, 159 A. (2d) 304.

§ 2. Keeping separate.

Chapter 41, § 111-G, does not violate section.—See note to § 1.

Nor does c. 27-A, § 6.—See note to § 1.

Cited in Opinion of the Justices, 157 Me. 104, 170 A. (2d) 647.

ARTICLE IV.

PART FIRST.

HOUSE OF REPRESENTATIVES.

§ 1. Legislature of Maine; reservation of power in people; style of enactment.

Chapter 41, § 111-G, does not violate section.—See note to article III, § 1.

Cited in Opinion of the Justices, 153 Me. 216, 136 A. (2d) 508; Opinion of the Justices, 153 Me. 469, 145 A. (2d) 250; Opinion of the Justices, 155 Me. 30, 152 A. (2d) 81.

ARTICLE IV.

PART THIRD.

LEGISLATIVE POWER.

§ 1. Biennial meetings and general powers.

Applied in Swed v. Inhabitants of Town of Bar Harbor, 158 Me. 220, 182 A. (2d) 664.

Quoted in Crommett v. Portland, 150 Me. 217, 107 A. (2d) 841; Opinion of the Justices, 152 Me. 440, 131 A. (2d) 904.

Cited in Opinion of the Justices, 155 Me. 125, 152 A. (2d) 494; Opinion of the Justices, 157 Me. 104, 170 A. (2d) 647.

§ 3. Judge of elections and qualifications of members; quorum.

The legislature may prescribe reasonable rules of conduct and procedure in resolving election contests involving its own membership, but its jurisdiction continues to rest upon the authority vested in it by the constitution and may not be made to depend upon any technical compliance or failure to comply with such procedural requirements. Opinion of the Justices, 157 Me. 98, 170 A. (2d) 657.

§ 7. Compensation and traveling expenses.

Cross reference.—As to salary and travel of members of legislature and representatives of Indian tribes, see R. S. c. 10, § 2.

Expenses other than travel are living or subsistence expenses and come within the meaning of compensation under this sec-

tion. Opinion of the Justices, 159 Me. 77, 190 A. (2d) 910.

And are covered by this section.—It is implicit in this section that the amount paid to members of the house and senate for the regular sessions and for attendance at extra sessions is intended to cover all personal expenses except expense of travel. Opinion of the Justices, 159 Me. 77, 190 A. (2d) 910.

Hence, legislature may reimburse legislators for expenses in attendance of daily sessions.—It is within the power of the legislature to provide for the reimbursement of senators and representatives for expenses, other than travel, in attendance at daily sessions. Opinion of the Justices, 159 Me. 77, 190 A. (2d) 910.

But provision for reimbursement cannot take effect during existence of legislature which enacted it. — The legislature could not constitutionally provide for the reimbursement of senators and representatives for expenses, other than travel, in attendance at daily sessions, where such provision was to take effect during the existence of the legislature which enacted it. Opinion of the Justices, 159 Me. 77, 190 A. (2d) 910.

Mileage of legislators for travel to the legislature is not "compensation" within the meaning of the constitution and provision for an increase in mileage allowances may properly be made by an act or resolve. Opinion of the Justices, 152 Me. 302; Opinion of the Justices, 159 Me. 77, 190 A. (2d) 910.

But may not be increased by joint order of legislature.—Mileage of legislators for travel to the legislature is personal expense as distinguished from legislative expense. Thus an increase in the mileage allowance may not be provided for in a joint order but can be effected only by an act or resolve of the legislature passed as a law by both branches thereof and submitted to the executive for his executive approval in accordance with the constitution. Opinion of the Justices, 152 Me. 302.

Travel expense is a personal expense which may be provided only by an act or resolve passed as a law and not by a legislative order. Opinion of the Justices, 159 Me. 77, 190 A. (2d) 910.

§ 9. Origin, amendment or rejection of bills.

Bill amending quahog tax statute not one for revenue.—P. L. 1957, c. 429, § 22 (c. 16, §§ 294 to 301), insofar as it amended the original quahog tax statute, was not a bill to raise revenue within the meaning of this section. State v. Lasky, 156 Me. 419, 165 A. (2d) 579.

§ 16. Time acts and resolutions take effect; emergencies.

No act can be given, etc.

Under the provisions of this constitutional mandate, it is essential that there be presented to the legislature, in the case of proposed emergency legislation, reasons in the preamble why the act should go into effect immediately. Maine Employment Security Comm. v. Charest, 158 Me. 43, 177 A. (2d) 654.

Quoted in Opinion of the Justices, 153 Me. 469, 145 A. (2d) 250.

Cited in State v. Lasky, 156 Me. 419, 165 A. (2d) 579; Opinion of the Justices, 159 Me. 77, 190 A. (2d) 910.

§ 20. Definitions of words in provisions as to referendum and initiative.—As used in either of the three preceding sections the words "electors" and "people" mean the electors of the state qualified to vote for governor; "recess of the legislature" means the adjournment without day of a session of the legislature; "general election" means the November election for choice of presidential electors, governor and other state and county officers; "measure" means an act, bill, resolve or resolution proposed by the people, or two or more such, or part or parts of such, as the case may be; "written petition" means one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of one of the petitioners certified thereon, and accompanied by the certificate of the clerk of the city, town or plantation in which the petitioners reside that their names appear on the voting list of his city, town or plantation as qualified to vote for governor. The petitions shall set forth the full text of the measure requested or proposed. The full text of a measure submitted to a vote of the people under the provisions of the constitution need not be printed

on the official ballots, but, until otherwise provided by the legislature, the secretary of state shall prepare the ballots in such form as to present the question or questions concisely and intelligibly. (Amendment LXXXIII, proclaimed September 19, 1957.)

Effect of amendment. — Amendment LXXXIII amended the definition of "general election," appearing in the first sentence of this section. The amendment struck out the words "or the September election for choice of governor and other state and county officers," formerly appearing after the word "electors" in this definition and substituted in lieu thereof the words "governor and other state and county officers".

ARTICLE V.

PART FIRST.

EXECUTIVE POWER.

§ 1. Governor as supreme executive power.

Chapter 27-A, § 6, not in conflict with section.—Provisions of R. S. c. 27-A, § 6, permitting suspension of the execution of a sentence, do not conflict with this section. State v. Blanchard, 156 Me. 30, 159 A. (2d) 304.

§ 2. Election; term; when ineligible to succeed himself.—The governor shall be elected by the qualified electors, and shall hold his office for four years from the first Wednesday of January next following the election. The person who has served two consecutive popular elective four-year terms of office as governor shall be ineligible to succeed himself. (Amendment LXXXIV, proclaimed September 19, 1957.)

Effect of amendment. — Amendment LXXXIV substituted the word "four" for the word "two" in the first sentence of this section and added the second sentence in its entirety.

§ 3. Manner of election.—The meetings for election of governor every four years shall be notified, held and regulated, and votes shall be received, sorted, counted, declared and recorded, in the same manner as those for senators and representatives. They shall be sealed and returned into the secretary's office in the same manner, and at the same time every four years as those for senators. And the secretary of state for the time being shall, on the first Wednesday of January, then next, lay the lists before the senate and house of representatives, and also the lists of votes of citizens in the military service, returned into the secretary's office, to be by them examined, and, in case of a choice by a plurality of all the votes returned, they shall declare and publish the same. But, if no person shall have a plurality of votes, the house of representatives shall, by ballot, from the persons having the four highest numbers of votes on the lists, if so many there be, elect two persons, and make return of their names to the senate, of whom the senate shall, by ballot, elect one, who shall be declared the governor. (Amendment LXXXIV, proclaimed September 19, 1957.)

Effect of amendment. — Amendment LXXXIV inserted the words "every four years" in the first and second sentences of this section.

§ 4. Qualifications.—The governor shall, at the commencement of his term, be not less than thirty years of age; a citizen of the United States for at least fifteen years, have been five years a resident of the state; and at the time of his election and during the term for which he is elected, be a resident of said state. (Amendment LXXIX, proclaimed September 26, 1955.)

Effect of amendment.—Prior to amendment LXXIX this section required that the governor should be a "natural born" citizen. The amendment deleted the two quoted words and added the clause requiring a 15-year residency in the United States.

§ 9. Giving information and recommending measures to legislature.

Quoted in Opinion of the Justices, 153 Me. 216, 136 A. (2d) 508.

§ **11. Reprieves, commutations and pardons.**—He shall have power, with the advice and consent of the council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. Such power to grant reprieves, commutations and pardons shall include offenses of juvenile delinquency. And he shall communicate to the legislature, at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation, or pardon, and the conditions, if any, upon which the same was granted. (Amendment LXXVIII, proclaimed September 26, 1955.)

Effect of amendment. — Amendment LXXVIII inserted the second sentence relative to offenses of juvenile delinquency.

Restriction upon authority of legislature to interfere with powers of governor and council. — The power to act, under this section, is one granted to the governor and council by the constitution, and legislative action is limited to the adoption of regulations "relative to the manner of applying for pardons." Other than this, the legislature is without authority to control in any way, regulate or interfere with the powers of the governor and council, under this section. Baston v. Robbins, 153 Me. 128, 135 A. (2d) 279.

Chapter 27-A, § 6, not in conflict with section.—See note to § 1.

§ **14. Vacancy in office of governor.**—Whenever the office of governor shall become vacant by death, resignation, removal from office or otherwise, the president of the senate shall assume the office of governor until another governor shall be duly qualified; in the event such vacancy occurs not less than 90 days immediately preceding the date of the primaries for nominating candidates to be voted for at the biennial election next succeeding, the president of the senate shall exercise the office of governor until the first Wednesday of January following such biennial election. At such biennial election, a governor shall be elected to fill the unexpired term created by such vacancy, unless the vacancy shall have occurred less than 90 days immediately preceding the date of, or after, such primaries, in which case the then president of the senate shall fill the unexpired term; and in case of the death, resignation, removal from office or other disqualification of the president of the senate, so exercising the office of governor, the speaker of the house of representatives shall exercise the office, until a president of the senate shall have been chosen; and when the office of governor, president of the senate, and speaker of the house shall become vacant, in the recess of the senate, the person, acting as secretary of state for the time being, shall by proclamation convene the senate, that a president may be chosen to exercise the office of governor. And whenever either the president of the senate, or speaker of the house shall so exercise said office, he shall receive only the compensation of governor, but his duties as president or speaker shall be suspended; and the senate or house, shall fill the vacancy, until his duties as governor shall cease. (Amendment LXXXIV, proclaimed September 19, 1957.)

Effect of amendment. — Amendment LXXXIV substituted the word "assume" for the word "exercise," formerly appearing in the third line of this section, and added all of the language beginning with the words "in the event" in the fourth line and ending with the word "term" in the twelfth line of this section.

ARTICLE VI.

JUDICIAL POWER.

§ 1. Powers vested in Supreme Judicial and other established courts.

All the judicial power in this state has been distributed and vested by the constitution.—See note to article III, § 1.

§ 3. Opinions to be given when required by either branch of government.

In an advisory opinion there is no decision; there is no binding precedent. Opinion of the Justices, 157 Me. 152, 170 A. (2d) 652.

And the opinion given is the opinion of each justice as an individual. It is not the opinion of the supreme judicial court. Opinion of the Justices, 157 Me. 152, 170 A. (2d) 652.

Advisory opinions do not replace decisions. — However useful advisory opinions may be as a guide to proposed actions, they do not replace, and are not designed to replace, or to be a substitute for, decisions made in course of litigation. Opinion of the Justices, 157 Me. 152, 170 A. (2d) 652.

Questions held improper to answer.

See Opinion of the Justices, 157 Me. 152, 170 A. (2d) 652.

Applied in Opinion of the Justices, 150 Me. 362, 105 A. (2d) 454; Opinion of the Justices, 152 Me. 440, 131 A. (2d) 904; Opinion of the Justices, 152 Me. 449, 132 A. (2d) 440; Opinion of the Justices, 152 Me. 458, 132 A. (2d) 47; Opinion of the Justices, 153 Me. 202, 136 A. (2d) 528; Opinion of the Justices, 153 Me. 216, 136 A. (2d) 508; Opinion of the Justices, 153 Me. 469, 145 A. (2d) 250; Opinion of the Justices, 155 Me. 30, 152 A. (2d) 81; Opinion of the Justices, 155 Me. 125, 152 A. (2d) 494; Opinion of the Justices, 157 Me. 98, 170 A. (2d) 657; Opinion of the Justices, 157 Me. 104, 170 A. (2d) 647; Opinion of the Justices, 157 Me. 187, 170 A. (2d) 660; Opinion of the Justices, 157 Me. 525, 175 A. (2d) 728; Opinion of the Justices, 159 Me. 77, 190 A. (2d) 910.

§ 7. Election and tenure of judges and registers of probate; vacancies.—Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in, at the biennial election on the Tuesday following the first Monday of November, and shall hold their offices for four years, commencing on the first day of January next after their election. Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid at the November election, next after their occurrence; and in the meantime, the governor, with the advice and consent of the council, may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January next after the election aforesaid. (Amendment LXXXIII, proclaimed September 19, 1957.)

Effect of amendment. — Amendment LXXXIII substituted the words "Tuesday following the first Monday of November," for the words "second Monday of September," formerly appearing in the first sentence of this section. It also substituted the word "November" for the word "September" in the second sentence.

ARTICLE VIII.

LITERATURE.

Towns to support public schools; encouragement and endowment of academies, colleges and seminaries.

This article is mandatory, etc.

In accord with original. See Squires v. Inhabitants of Augusta, 155 Me. 151, 153 A. (2d) 80; McGary v. Barrows, 156 Me. 250, 163 A. (2d) 747.

The constitution marks the mandatory duty of the legislature, but is not a prohibition upon its powers. Opinion of the Justices, 153 Me. 469, 145 A. (2d) 250.

Control of schools, etc.

In accord with original. See Opinion of

the Justices, 153 Me. 469, 145 A. (2d) 250; Squires v. Inhabitants of Augusta, 155 Me. 151, 153 A. (2d) 80.

And legislature to determine what is "suitable" provision.

In accord with original. See Opinion of the Justices, 153 Me. 469, 145 A. (2d) 250.

There is no violation of this article by the Sinclair Act, R. S. c. 41, § 111-A to § 111-U. McGary v. Barrows, 156 Me. 250, 163 A. (2d) 747.

ARTICLE IX.

GENERAL PROVISIONS.

§ 8. Taxes apportioned and assessed according to valuation; levy on intangibles.

The purpose, etc.

The purpose of this section is to equalize public burdens so that the taxpayer shall contribute to the entire tax burden in proportion to his property. Opinion of the Justices, 155 Me. 30, 152 A. (2d) 81.

Authority of legislature as to modes of assessment. — While the legislature has the authority to exempt from taxation by uniform laws any particular class of property, it does not have authority, except in the case of intangible personal property, to provide for one mode of assessment as to one class of property and another mode as to another class. Opinion of the Justices, 155 Me. 30, 152 A. (2d) 81.

Percentage of true value taken for taxation purposes must be uniform and equal. —The law requires equality, and requires that each property owner pay his just proportion of taxes. The law requires that real estate and tangible personal property be valued on an equal basis "according to the just value thereof." The law requires that there be no favoritism nor discrimination. The law requires that when a percentage of the true value is taken for taxation purposes, the percentage be uniform and equal on all real estate and tangible property. Sears, Roebuck & Co. v. Presque Isle, 150 Me. 181, 107 A. (2d) 475.

Assessment held proper.—See Sears, Roebuck & Co. v. Presque Isle, 150 Me. 181, 107 A. (2d) 475.

Proposed taxes violating section.

See Opinion of the Justices, 155 Me. 30, 152 A. (2d) 81.

Quoted in Opinion of the Justices, 153 Me. 469, 145 A. (2d) 250.

§ 8-A. Industrial building construction.—For the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial and manufacturing enterprises within the physical boundaries of any municipality, the registered voters of that municipality may, by majority vote, authorize the issuance of notes or bonds in the name of the municipality for the purpose of constructing buildings for industrial use, to be leased or sold by the municipality to any responsible industrial firm or corporation. (Amendment LXXXVII, proclaimed November 21, 1962.)

Second submission to voters was proper. —Where this section was submitted to the electors on a date not in conformity with article X, § 4, of the Constitution of Maine, the favorite vote cast for this section was invalid; but this section could be again presented to the electorate at the next biennial meeting (Nov. 1962) in conformity with article X, § 4, of the Constitution of Maine. Opinion of the Justices, 157 Me. 525, 175 A. (2d) 728.

§ 9. Power of taxation not to be surrendered or suspended.

Exemption statute cannot, etc.

In accord with original. See Opinion of the Justices, 155 Me. 30, 152 A. (2d) 81.

§ 10. Election, tenure and removal of sheriffs. — Sheriffs shall be elected by the people of their respective counties, by a plurality of the votes given in on the Tuesday following the first Monday of November, and shall hold their offices for two years from the first day of January next after their election, unless sooner removed as hereinafter provided.

(Amendment LXXXIII, proclaimed September 19, 1957.)

Effect of amendment. — Amendment LXXXIII substituted the words "Tuesday following the first Monday of November," for the words "second Monday of September,", formerly appearing in the first paragraph of this section. As the second paragraph of this section was not changed by the amendment, it is not set out.

§ **12. Voting by persons in military service for county officers.**—Repealed by Amendment LXXXI, proclaimed September 26, 1955.

§ **14. State debt limit.**—The credit of the state shall not be directly or indirectly loaned in any case, except as provided in section 14-A. The legislature shall not create any debt or debts, liability or liabilities, on behalf of the state, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed two million dollars, except to suppress insurrection, to repel invasion, or for purposes of war; and excepting also that whenever two-thirds of both houses shall deem it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the legislature may authorize the issuance of bonds on behalf of the state at such times and in such amounts and for such purposes as approved by such action; but this shall not be construed to refer to any money that has been, or may be deposited with this state by the government of the United States, or to any fund which the state shall hold in trust for any Indian tribe. Whenever ratification by the electors is essential to the validity of bonds to be issued on behalf of the state, the question submitted to the electors shall be accompanied by a statement setting forth the total amount of bonds of the state outstanding and unpaid, the total amount of bonds of the state authorized and unissued, and the total amount of bonds of the state contemplated to be issued if the enactment submitted to the electors be ratified. (Amendment LXXXII, proclaimed September 19, 1957.)

Effect of amendment. — Amendment LXXXII added the words "except as provided in section 14-A" at the end of the first sentence of this section.

§ **14-A. Authority of legislature to insure payment of industrial loans.**—For the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial and manufacturing enterprises within the state, the legislature by proper enactment may insure the payment of mortgage loans on the real estate within the state of such industrial and manufacturing enterprises not exceeding in the aggregate $20,000,000 in amount at any one time and may also appropriate moneys and authorize the issuance of bonds on behalf of the state at such times and in such amounts as it may determine to make payments insured as aforesaid. (Amendment LXXXII, proclaimed September 19, 1957.)

This section added by amendment LXXXII.

Complete ownership of real estate by industry not required. — The words "of such industrial and manufacturing enterprises", as used in this section, do not require complete ownership of the real estate by the industry since the people by amending the constitution intended to give the legislature broad powers to implement the policy permitted under this section. Martin v. Maine Savings Bank, 154 Me. 259, 147 A. (2d) 131.

Provision not abridged by Enabling Act. —The provision of this section that "the legislature by proper enactment may insure the payment of mortgage loans on the real estate within the state of such industrial and manufacturing enterprises" is not abridged by subsection VIII of section 5 of the Enabling Act which limits the mortgagors "to local development corporations." Martin v. Maine Savings Bank, 154 Me. 259, 147 A. (2d) 131.

Quoted in Opinion of the Justices, 153 Me. 202, 136 A. (2d) 528.

§ **15. Municipal indebtedness limit.**—No city or town shall hereafter create any debt or liability, which singly, or in the aggregate with previous debts or liabilities, shall exceed seven and one-half per cent of the last regular valuation of said city or town; *provided, however,* that the adoption of this article shall

not be construed as applying to any fund received in trust by said city or town, nor to any loan for the purpose of renewing existing loans or for war, or to temporary loans to be paid out of money raised by taxation, during the year in which they are made. Long term rental agreements not exceeding forty years under contracts with the Maine School Building Authority shall not be debts or liabilities within the provisions of this section. (Amendment LXXX, proclaimed September 26, 1955.)

Effect of amendment. — Amendment LXXX added the last sentence of this section relating to rental contracts with "Maine School Building Authority."

Provision added to section by amendment LXXIII was eliminated by amendment LXXVI. — Amendment LXXVI, proclaimed September 21, 1954, which raised the limitation upon municipal indebtedness from 5% to 7½%, failed to include in this section as amended the provision added by amendment LXXIII, proclaimed September 26, 1951, to the effect that "long term rental agreements not exceeding forty years under contracts with the Maine School Building Authority shall not be debts or liabilities within the provisions of this article." Thus the exemption provision added by amendment LXXIII was effectively removed from this section and repealed by amendment LXXVI. Opinion of the Justices, 150 Me. 362, 105 A. (2d) 454.

But contracts entered into before proclamation of amendment LXXVI are not affected.—Contracts between municipalities and the Maine School Building Authority entered into between September 26, 1951 and September 21, 1954, within the terms of amendment LXXIII, adopted in 1951, would not be affected by amendment LXXVI, proclaimed on September 21, 1954. Opinion of the Justices, 150 Me. 362, 105 A. (2d) 454.

And indebtedness exempt when incurred is not counted as part of municipal debt.— The removal from the constitution of the exemption of debts incurred under contracts with the Maine School Building Authority does not require that those debts which were exempt from municipal indebtedness under this section, when incurred, must now be counted as part of the municipal debt of any municipality which has contracted with the authority. Opinion of the Justices, 150 Me. 362, 105 A. (2d) 454.

Quasi municipal corporation not limited by section.—The Bangor recreation center is a quasi municipal corporation, the available borrowing capacity of which is not limited by the constitutional debt limit of the city of Bangor. Carlisle v. Bangor Recreation Center, 150 Me. 33, 103 A. (2d) 339.

Quoted in Opinion of the Justices, 153 Me. 469, 145 A. (2d) 250.

Cited in Opinion of the Justices, 153 Me. 216, 136 A. (2d) 508.

§ 19. Limitation on expenditure of motor vehicle and motor vehicle fuel revenues.

The manifest purpose of this section is to prevent diversion of such revenues to other than highway purposes. Opinion of the Justices, 155 Me. 125, 152 A. (2d) 494.

Charge imposed as prerequisite to registration. — A proposed act imposing a charge as a prerequisite to the registration of a motor vehicle, however such charge may be designated, falls within the spirit if not the exact letter of the constitutional limitation, and may not, therefore, be diverted to purposes other than those enumerated in this section. Opinion of the Justices, 155 Me. 125, 152 A. (2d) 494.

Construction of pole line or water pipe not considered construction of highway.— It is not commonly considered that a power company in erecting a pole line or a water district in laying a pipe in a highway is constructing a highway. To an even lesser degree would the construction of a pole line or a water pipe across country be considered the construction or reconstruction of a highway, although the reason for the relocation was occasioned solely by changes in the highway. Opinion of the Justices, 152 Me. 453.

The relocation of a utility facility is not to be construed as construction or reconstruction of a highway within the meaning of this section. Opinion of the Justices, 152 Me. 453.

The language of this section should not be extended beyond its plain and ordinary meaning. — See Opinion of the Justices, 152 Me. 453.

Cited in Opinion of the Justices, 157 Me. 104, 170 A. (2d) 647; Nelson v. Maine Turnpike Authority, 157 Me. 174, 170 A. (2d) 687.

§ **19-A. Limitation on use of funds of the Maine state retirement system.**—All of the assets, and proceeds or income therefrom, of the Maine state retirement system or any successor system and all contributions and payments made to the system to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes. (Amendment LXXXVI, proclaimed November 21, 1962.)

Second submission to voters was proper.—Where this section was submitted to the electors on a date not in conformity with article X, § 4, of the Constitution of Maine, the favorable vote cast for this section was invalid; but this section could be again presented to the electorate at the next biennial meeting (Nov. 1962) in conformity with article X, § 4, of the Constitution of Maine. Opinion of the Justices, 157 Me. 525, 175 A. (2d) 728.

§ **21. Continuity of government in case of enemy attack.**—Notwithstanding any general or special provision of this constitution, the legislature, in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations including but not limited to the financing thereof. In the exercise of the powers hereby conferred the legislature shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the legislature so to do would be impracticable or would admit of undue delay. (Amendment LXXXV, proclaimed November 30, 1960.)

Effect of amendment.—This section was added by amendment LXXXV.

ARTICLE X.

ADDITIONAL PROVISIONS.

§ **3. Laws now in force continue until repealed.**

A writ of error coram nobis was originally, and now is, a part of the procedural law of Maine. In 1820, when Maine became a state, this article effectively incorporated all "laws" then in force. Whether the word "law" refers to Massachusetts law or to the common law is immaterial, for by either standard a writ of error coram nobis was then recognized as a remedy. Dwyer v. State, 151 Me. 382, 120 A. (2d) 276.

§ **4. Amendments to constitution.**—The legislature, whenever two-thirds of both houses shall deem it necessary, may propose amendments to this constitution; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, in the manner prescribed by law, at the next biennial meetings in the month of November, or to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of senators and representatives, on the Tuesday following the first Monday of November following the passage of said resolve, to give in their votes on the question, whether such amendment shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this constitution. (Amendment LXXXIII, proclaimed September 19, 1957.)

Effect of amendment. — Amendment LXXXIII substituted the word "November" for the word "September", formerly appearing in the seventh line of this

section and substituted the words "Tuesday following the first Monday of November" for the words "second Monday in September", formerly appearing in the ninth line of this section.

Section denotes precise day and month for voting. — A precise day and calendar month for voting for a constitutional amendment by either of two alternative methods are precisely appointed and denoted by this section. Opinion of the Justices, 157 Me. 525, 175 A. (2d) 728.

And noncompliance therewith renders favorable vote invalid.—The fact that constitutional amendments were submitted to the electors on a date not in conformity with this section rendered invalid and ineffective the favorable vote cast for the amendments. Opinion of the Justices, 157 Me. 525, 175 A. (2d) 728.

As no other time can be authorized.— When the constitution designates, in express and explicit terms, the precise time when a fundamental act shall be done, and is utterly silent as to its performance at any other time, the doing of the act cannot be authorized at any other time. Opinion of the Justices, 157 Me. 525, 175 A. (2d) 728.

But amendment can be again presented at next biennial meeting. — Amendments which had been improperly submitted to the electors, thereby rendering the favorable votes cast for the amendments invalid, could be again presented to the electorate at the next biennial meeting in conformity with this section. Opinion of the Justices, 157 Me. 525, 175 A. (2d) 728.