

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Seventeenth Legislature

OF THE

State Of Maine

VOLUME VII

SECOND REGULAR SESSION

Senate

March 14, 1996 to April 3, 1996

SECOND CONFIRMATION SESSION

August 1, 1996

SECOND SPECIAL SESSION

House of Representatives

September 5, 1996 to September 7, 1996

Senate

September 5, 1996 to September 7, 1996

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HOUSE AND SENATE LEGISLATIVE SENTIMENTS

To the Honorable House of Representatives of the State of Maine:

We do not concur in the opinion of our colleagues on the Court and pursuant to article VI, section 3 of the Maine Constitution, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit our separate response to the questions propounded by the House of Representatives on March 25, 1996.

We first address Question Three that essentially asks whether L.D. 1827 must be submitted to the voters even if it is the opinion of the Justices that the bill is unconstitutional. We agree with our colleagues that the question must be answered in the affirmative. Me. Const. art. IV, pt. 3, § 18 (Supp. 1995) requires that the initiated bill be submitted to the voters regardless of our opinion as to its constitutional validity. The right of the people to enact legislation is absolute and cannot be abridged by any direct or indirect action of the Legislature. Farris ex rel. Dorsky v. Goss, 143 Me. 227, 231 (1948). We also agree with our colleagues that Question Four should be answered in the negative. Finally, we also agree with our colleagues that, in light of the fact that the request for an advisory opinion is made in the closing days of the legislative session, "extensive study and analysis [of the issues] is not possible."

The answer to Question Three prompts us to reach a different conclusion from our colleagues as to Questions One and Two. We believe that Questions One and Two do not constitute important questions of law upon a solemn occasion requiring an advisory opinion and, therefore, decline to answer them. Although the Legislature has the option of enacting L.D. 1827 in its current form, the initiated measure cannot be amended nor can it be kept from the voter referendum. The Legislature may submit a competing measure to voter referendum along with L.D. 1827, pursuant to Me. Const. art. IV, pt. 3, § 18, but there is nothing before us to indicate that a competing measure free from the same constitutional questions is being considered. Opinion of the Justices, 623 A.2d 1258, 1264 (Me. 1993).

"The matters with regard to which advisory opinions are proper are those of instant, not past nor future, concern; things of live gravity." Opinion of the Justices, 134 Me. 510, 513 (1936). Only recently the Law Court held that whether a proposed initiative would be ineffective as an attempt to limit future legislative action is a question not ripe for judicial review prior to approval by the voters. Wagner v. Secretary of State, 663 A.2d 564, 567 (Me. 1995). Ripeness concerns the fitness of an issue for judicial decision and the hardship to the parties of withholding court consideration. Maine Pub. Serv. Co. v. Public Util. Comm'n, 524 A.2d 1222, 1226 (Me. 1987). Like the proposed initiative at issue in Wagner, this measure may never become effective, and we thus are not faced with a concrete, certain, or immediate legal problem. Except in rare circumstances, not present here, we believe "it is inappropriate to address the constitutionality of an initiative measure before it has been presented to the voters." Opinion of the Justices, 623 A.2d at 1264, and prefer to allow the electorate to express its view prior to rendering our opinion on the measure.

We believe we should not interfere with or in any way handicap the people's right of franchise by

offering an opinion on the enforceability of an initiated measure before the electorate has expressed its view.

Accordingly, we answer Question Three in the affirmative and Question Four in the negative. We respectfully decline, however, to answer Questions One and Two.

Respectfully submitted,
S/Caroline D. Glassman
S/Robert W. Clifford
S/Kermit V. Lipez
Associate Justices

Was read and ordered placed on file.

The following Communication: (H.C. 435)

STATE OF MAINE
SUPREME JUDICIAL COURT
AUGUSTA, MAINE 04330

April 3, 1996

Hon. Dan A. Gwadosky
Speaker of the House
State House - Room 301
Augusta, Maine 04333

Dear Mr. Speaker:

It is my pleasure to transmit the enclosed Opinion of the Justices with reference to the Questions Propounded in a communication dated March 26, 1996.

Sincerely yours,
S/Daniel E. Wathen
Chief Justice

OPINION OF THE JUSTICES
OF THE SUPREME JUDICIAL COURT
GIVEN UNDER THE PROVISIONS OF SECTION 3
OF ARTICLE VI OF THE CONSTITUTION
Docket No. OJ-96-3

QUESTIONS PROPOUNDED BY THE HOUSE OF REPRESENTATIVES
IN A COMMUNICATION
DATED MARCH 26, 1996
ANSWERED APRIL 3, 1996

OPINION OF THE JUSTICES

To the Honorable House of Representatives of the State of Maine:

In compliance with the provisions of section 3 of article VI of the Constitution of Maine we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit the following response to the questions propounded by the House of Representatives on March 26, 1996.

When this Court receives a request for an advisory opinion from either house of the Legislature or from the Governor, we first determine whether we have the constitutional authority to answer the propounded questions. Opinion of the Justices, 623 A.2d 1258, 1261 (Me. 1993). Our State's Constitution obliges us to give our opinion "upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives." Me. Const. art. VI, § 3. We answer only questions concerning matters of present concern, i.e., what we have previously referred to as "things of live gravity." Opinion of the Justices, 623 A.2d at 1261.

The House of Representatives had before it an initiated bill, L.D. 1823, the purpose of which was

twofold: 1.) to create an alternative, publicly-financed campaign election fund and 2.) to reduce the caps on election contributions in 21 M.R.S.A. §§ 1015(1) and (2). Pursuant to article IV, part third, section 18, clause 2 of the Constitution of Maine, an initiated bill, unless enacted without change by the Legislature at the session at which it is presented, must be submitted to the electors. Me. Const. art. IV, pt. 3, § 18.

We are informed that L.D. 1823 has expired for purposes of legislative action. The concurrence of both houses was required in order to present the bill to the Governor. Me. Const. art. IV, pt. 3, § 2. The failure of both chambers to agree to the passage of the bill results in the submission of the bill to the electorate pursuant to Me. Const. art. IV, pt. 3, § 18.

Therefore the question of enactment of L.D. 1823 is no longer before the Maine Legislature and consequently a solemn occasion no longer exists. In sum, the House does not require guidance in the discharge of its obligations as there is no further action that it may take. Because we are not presented with an important question of law upon a solemn occasion, we must refrain from issuing an opinion that is neither useful to the Legislature nor within the constitutional grant of our advisory power. Dated at Portland, Maine, this third day of April, 1996.

Respectfully submitted:
S/Daniel E. Wathen
Chief Justice
S/David G. Roberts
S/Caroline D. Glassman
S/Robert W. Clifford
S/Paul L. Rudman
S/Howard H. Dana, Jr.
S/Kermit V. Lipez
Associate Justices

Was read and ordered placed on file.

The following Communication: (H.C. 436)
Jobs for Maine's Graduates, Inc.
209 Maine Avenue
Suite 200
Farmingdale, Maine 04344

April 8, 1996

Joseph W. Mayo
Clerk of the House
House of Representatives
State House Station #2
Augusta, Maine 04333
Dear Clerk Mayo:

Pursuant to Public Law, Chapter 348, please find attached Jobs for Maine's Graduates, Inc. 1995 Annual Report.

Last week we distributed the report to the Joint Standing Committees of Labor and of Education and Cultural Affairs, along with original cover letters for each member. At that time, I was informed that I needed to submit the same to you. I apologize for the delay.

Please do not hesitate to contact us if we can clarify any concerns, questions, or issues you may have.

Sincerely,
S/John Stivers, Jr.
Communications Officer

Was read and with accompanying report ordered placed on file.

The following Communication: (H.C. 437)
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
#135 STATE HOUSE STATION
ROOM 114, STATE OFFICE BUILDING
AUGUSTA, MAINE 04333-0135
May 7, 1996

The Honorable Dan A. Gwadosky
Speaker of the House of Representatives
State House Station #2
August, Maine 04333

Dear Speaker Gwadosky:
Pursuant to the provisions of 1 M.R.S.A. Section 1007, I enclose herewith the report of the Commission on Governmental Ethics and Election Practices for the calendar years 1994 and 1995.

Sincerely,
S/Marilyn Canavan
Director

Was read and with accompanying report ordered placed on file.

The following Communication: (H.C. 438)
117th Maine Legislature
May 30, 1996

The Honorable Joseph Mayo
Clerk of the House
State House Station #2
Augusta, ME 04333

Dear Clerk Mayo:

Please be advised that we have made the following appointment:

Motor Carrier Training Advisory Board; Pursuant to Public Law 1995, Chapter 376, Section 5:

Senator Albert G. Stevens, Jr. of Sabattus
Please let us know if you have any questions regarding this appointment.

Sincerely,
S/Jeffrey H. Butland S/Dan A. Gwadosky
President of the Senate Speaker of the House
Was read and ordered placed on file.

The following Communication: (H.C. 439)
Bureau of Corporations, Elections and Commissions
Department of the Secretary of State
101 State House Station
Augusta, Maine 04333-0101

June 7, 1996

Joseph W. Mayo, Clerk of the House
House of Representatives
2 State House Station
Augusta, Maine 04333

Dear Clerk Mayo:

Pursuant to Public Law 601, An Act to Place Penobscot Land in Trust, I am submitting to your office a certified resolution by the Tribal Council of the Penobscot Nation that the Penobscot Nation has agreed to the provisions of this act.

Sincerely,
S/Julie L. Flynn
Director of Corporations and Elections