

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Sixteenth Legislature
OF THE
State Of Maine

VOLUME I

FIRST REGULAR SESSION

House of Representatives
December 2, 1992 to May 13, 1993

opposed will vote no.

ROLL CALL NO. 60

YEA - Ahearne, Bowers, Brennan, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Constantine, Cote, Daggett, DiPietro, Donnelly, Dore, Driscoll, Erwin, Faircloth, Gamache, Gean, Gould, R. A.; Gwadosky, Hatch, Heeschen, Hichborn, Hogle, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Kerr, Ketterer, Kontos, Lemke, Lord, Marsh, Martin, H.; Melendy, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Norton, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pineau, Pinette, Plourde, Poulin, Rand, Richardson, Ricker, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Skoglund, Spear, Stevens, K.; Strout, Sullivan, Swazey, Tardy, Taylor, Townsend, E.; Townsend, L.; Tracy, Treat, True, Vigue, Walker, Wentworth, Winn.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bruno, Cameron, Carleton, Carr, Clukey, Coffman, Cross, Dutremble, L.; Farnum, Farren, Foss, Gray, Greenlaw, Hale, Heino, Hillock, Joy, Kneeland, Lemont, Libby James, Lindahl, Look, MacBride, Marshall, Murphy, Nickerson, Pendexter, Plowman, Quint, Reed, G.; Reed, W.; Robichaud, Small, Stevens, A.; Thompson, Tufts, Whitcomb, Zirkilton.

ABSENT - Adams, Aliberti, Beam, Campbell, Coles, Dexter, Farnsworth, Fitzpatrick, Kilkelly, Kutasi, Larrivee, Libby Jack, Lipman, Michael, Michaud, Nash, Ott, Pendleton, Pouliot, Simonds, Simoneau, Townsend, G.; Young, The Speaker.

Yes, 82; No, 45; Absent, 24; Paired, 0; Excused, 0.

82 having voted in the affirmative and 45 in the negative with 24 being absent, the Majority "Ought to Pass" Report was accepted, the Bill was read once.

Committee Amendment "A" (S-70) was read by the Clerk and adopted and the bill assigned for second reading, Wednesday, April 28, 1993.

Non-Concurrent Matter

Bill "An Act to Create the Tax-exempt Organization Sunshine Act of 1993" (H.P. 942) (L.D. 1271) which was referred to the Committee on State and Local Government in the House on April 15, 1993.

Came from the Senate referred to the Committee on Taxation in non-concurrence.

The House voted to recede and concur.

COMMUNICATIONS

The following Communication:

STATE OF MAINE
SUPREME JUDICIAL COURT
AUGUSTA, MAINE 04330

April 26, 1993

Hon. John L. Martin
Speaker of the House
State House Station #2

Augusta, Maine 04333

Dear Speaker Martin:

I enclose the Answers of the Justices to the Questions Propounded by the House Order, dated March 4, 1993, pertaining to Legislative Document 751.

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-93-1

QUESTIONS PROPOUNDED BY THE HOUSE OF REPRESENTATIVES
IN A COMMUNICATION

DATED MARCH 10, 1993

ANSWERED APRIL 26, 1993

ANSWERS 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 responses to the questions propounded by the House of Representatives on March 4, 1993.

On receiving a request for an advisory opinion from either house of the Legislature or the Governor, we must first determine whether we have constitutional authority to answer the propounded questions. Opinion of the Justices, 460 A.2d 1341, 1345 (Me. 1982). The Maine 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. IV, section 3.

We are to answer only questions pertaining to matters of "instant, not past or future concern; things of live gravity." Opinion of the Justices, 355 A.2d 341, 389 (Me. 1976) (citation omitted). "The anticipated need for the advice must not be 'tentative, hypothetical and abstract.'" Id. (quoting Opinion of the Justices, 330 A.2d 912, 915 (Me. 1975)). In this instance, the House of Representatives has before it an initiated bill, (L.D. 751 (116th Legis. 1993)), seeking to impose term limits on legislators and various constitutional officers. Pursuant to article IV, part third, section 18, clause 2 of the Maine Constitution, that initiative, "unless enacted without change by the Legislature at the session at which it is presented,

shall be submitted to the electors...." Therefore, the Legislature must either enact L.D. 751 without amendment² or decline to enact L.D. 751 and submit the proposal to the electors. The House of Representatives has expressed substantial doubt as to the bill's constitutionality based on advice from the Attorney General. The House's need for guidance in the discharge of its obligations is not merely hypothetical and constitutes an issue of instant concern despite the fact that the Legislature could decline to enact L.D. 751 and allow it to be submitted to the voters. See Opinion of the Justices, 370 A.2d 654 (Me. 1977) (solemn occasion existed even though the Senate could have declined to act on a pending initiative and the voters could have rejected the initiative at an election); Opinion of the Justices, 343 A.2d 196, 202 (Me. 1975) (solemn occasion existed when Governor was required to either act or refuse to act in pending complaint seeking removal of a District Attorney and Governor professed doubts based on legal advice regarding the constitutionality of the statute under which he was requested to act).

We conclude that the questions propounded constitute important questions of law on a solemn occasion, see Opinion of the Justices, 370 A.2d at 667; Opinion of the Justices, 355 A.2d at 389. We answer questions 1 and 2 in the affirmative and therefore do not answer question 3.

At issue is the scope of legislative power, which is declared to be plenary and subject only to the limitations of the state and federal constitutions. "The legislature, with the exceptions hereinafter stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to the Constitution, nor to that of the United States." Me. Const. art. IV, pt. 3, section 1. Legislative power is defined by limitation, not by grant, and is absolute except as expressly or by necessary implication restricted by the Constitution. "The people of this State retain all powers not enumerated. The Legislature of Maine may enact any law of any character or on any subject, unless it is prohibited, either in express terms or by necessary implication, by the Constitution of the United States or the Constitution of this State." Baxter v. Waterville Sewerage District, 146 Me. 211, 215, 79 A.2d 585, 588 (1951). See also Ace Tire Co. v. Municipal Officers of Waterville, 302 A.2d 90, 96 (Me. 1973) (interpreting article IV, part third, section 1 of the Maine Constitution as granting the Legislature plenary power "except as it may have been circumscribed expressly or inferentially by the constitution of the state or nation"); Town of Warren v. Norwood, 138 Me. 180, 192-93, 24 A.2d 229, 235 (1941) (stating that legislative power is "absolute and all-embracing except as expressly or by necessary implication restricted by the Constitution"). Thus the inquiry is whether the authority of the Legislature, or the authority of the electors through the process of initiative and referendum, Me. Const. art. IV, pt. 2, section 18, has been limited so that the proposed statutory qualifications for members of the Legislature and other constitutional officers may not be validly enacted.

In reviewing legislative enactments, we presume that the legislation is constitutional and invalidate it only if there is a clear showing by "strong and convincing reasons" that it conflicts with the

Constitution. Laughlin v. City of Portland, 111 Me. 486, 489, 90 A. 318, 319 (1914). In the present context, because the Maine Constitution does not expressly grant or deny legislative authority to prescribe qualifications for members of the Legislature and other constitutional officers beyond those enumerated, conflict between the proposed legislation and the Constitution could arise only by implication.

There are no qualifications set forth in the Constitution for the offices of secretary of state, treasurer, or attorney general, Me. Const., art. V, pts. 2 and 3; art. IX, section 11.³ Thus we find no implicit basis for restricting the power residing in the Legislature to enact reasonable qualifications for these offices. See Annotation, Legislative Power to Prescribe Qualifications for or Conditions to Constitutional Office, 34 A.L.R.2d 155, 174-75 (1962); see e.g., State ex. re. Askew v. Thomas, 293 So. 2d 40, 42 (Fla. 1974) (upholding a statute requiring residency for school board members in the absence of any constitutional qualifications).

Certain requirements are specified in the Constitution for representatives and senators. Those requirements consist of a period of citizenship, a minimum age, a period of state residency, and a period of residency in the district that the official will represent. The requirements are the same for representatives and for senators except for a difference in the minimum age. Me. Const. art. IV, pt. 1, section 4; art. IV, pt. 2, section 6.⁴ The requirements are stated in the negative and expressly disqualify any person not a citizen, or not a resident, or under the stated age.⁵ Such a specific statement of disqualification does not clearly and unmistakably give rise to an implication that the Legislature is without authority to prescribe additional qualifications for representatives or senators, provided the added qualifications are reasonable, do not conflict with those in the Constitution, and violate no guaranteed rights. See Annotation, Legislative Power to Prescribe Qualifications for or Conditions to Constitutional Office, 34 A.L.R. 2d at 166-68; see e.g., Boughton v. Price, 215 P.2d 286, 290 (Idaho 1950).

Prescribing additional qualifications by statute does implicate the constitutionally guaranteed right of suffrage, but reasonable restrictions on the eligibility for holding office only incidentally involve that right. Me. Const. art. II, section 1. Cf. Snider v. Shapp, 405 A.2d 602, 613 (Pa. Commw. Ct. 1979) (finding that a statute requiring candidates to file financial disclosure statements and proscribing conduct involving conflicts of interest did not unconstitutionally limit the field of candidates from which voters might choose).

It is our opinion that the limitations contained in L.D. 751 on the terms of office for secretary of state, treasurer, attorney general, representatives, and senators are within the legislative power and, if enacted, would be valid.

Dated: April 26, 1993

Respectfully submitted,

S/Daniel E. Wathen
Chief Justice

S/David G. Roberts
S/Samuel W. Collins, Jr.
S/Paul L. Rudman
S/Howard H. Dana, Jr.
Associate Justices

been established....
Me. Const. art. II, section 1.

ANSWER OF JUSTICE GLASSMAN AND JUSTICE CLIFFORD

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

¹The proposed legislation also seeks to impose term limits on the Office of State Auditor, which is not an office created by the Maine Constitution. That office is not a subject of the propounded questions.

²Generally, no solemn occasion exists when the matter on which an opinion is sought is "pending in committee and not yet before the inquiring branch of the Legislature." Opinion of the Justices, 370 A.2d 654, 667 (Me. 1977). The reason for the rule is that the proposed legislation might not reach the Legislature in its current form. Opinion of the Justices, 355 A.2d 341, 389 (Me. 1976). Accordingly, we have recognized an exception to that rule when "issues raised by the questions would be involved in whatever form the bill came out of Committee." Id. Because the initiated bill must be enacted by the Legislature in its present form or be submitted to the voters, the general rule is inapposite and we are free otherwise to find that a solemn occasion exists.

³The Constitution's sole limitation on the office of attorney general is to prohibit that official from holding certain incompatible offices. Me. Const. art. IX, section 2. The treasurer is subject to the same limitation and is prohibited from engaging in business or commerce while in office. Me. Const. art. V, pt. 3, section 3. We previously have suggested that the process set forth in the Constitution (Me. Const. art. IX, section 5) for removing constitutional officers is exclusive. See Opinion of the Justices, 343 A.2d 196, 203 (Me. 1975).

⁴ No person shall be a member of the House of Representatives, unless he shall, at commencement of the period for which he is elected, have been 5 years a citizen of the United States, have arrived at the age of 21 years, have been a residence in this State one year; and for the 3 months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the district which he represents. Me. Const. art. IV, pt. 1, section 4.

The Senators shall be 25 years of age at the commencement of the term, for which they are elected, and in all other respects their qualifications shall be the same as those of the Representatives.

Me. Const. art. IV, pt. 2, section 6.

⁵In contrast, the Constitution states in the affirmative the qualifications for voting.

Every citizen of the United States of the age of 18 years and upwards...shall be an elector for Governor, Senators and Representatives, in the city, town or plantation where his or her residence has

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 4, 1993.

Question 3 asks whether L.D. 751 must be sent to the voters even if it is the opinion of the justices that the bill is unconstitutional. We would answer that question in the affirmative. Me. Const. art. IV, pt. 3, section 18 requires that the initiated bill be submitted to the voters in its current form regardless of our opinion as to its constitutional validity. See Farris ex rel. Dorsky v. Goss, 143 Me. 227, 231, 60 A.2d 908, 911 (1948) (right of the people to enact legislation is an absolute one and cannot be abridged by any direct or indirect action of the legislature). Because we would answer Question 3 in the affirmative, Questions 1 and 2 do not, in our view, constitute important questions of law upon a solemn occasion requiring an advisory opinion. We therefore decline to answer them.

An advisory opinion is an "extraordinary responsibility" given "outside the context of any concrete, fully developed factual situation and without the benefits of adversary evidentiary and [fully developed] legal presentations." Opinion of the Justices, 437 A.2d 597, 610 (Me. 1981). Such opinions are subjected by the constitution to "carefully confined conditions," id., and may be rendered only on important questions of law on solemn occasions. Me. Const. art. VI, section 3. "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, 260 A.2d 142, 146 (Me. 1969) (quoting Opinion of the Justices, 134 Me. 510, 513, 191 A. 487, 488 (1936)).

The subject of Questions 1 and 2 is not related to any potential procedural defect in the pending initiated bill that could affect whether it can be sent to referendum. Rather, Questions 1 and 2 ask about the substantive constitutional validity of L.D. 751 and whether it will be enforceable if enacted. Although the legislature has the option of acting on L.D. 751, the initiated measure cannot be amended nor can it be kept from voter referendum except by enactment in its current form. The legislature may submit a competing measure to referendum along with L.D. 751 pursuant to Me. Const. art. IV, pt. 3, section 18, but there is nothing before us to indicate that a competing measure free from the same constitutional questions is being considered.

We are aware that the Court has in the past given an advisory opinion concerning an initiated bill.

See Opinion of the Justices, 370 A.2d 654 (Me. 1977). The circumstances leading to the rendering of that advisory opinion, however, were very different from the present situation. The 1977 initiated bill proposed a repeal of the uniform property tax. That proposal, as well as several specific bills that were pending before the legislature, had a direct and immediate effect on the Governor's proposed budget for the ensuing fiscal year (commencing just a matter of months from the date the advisory opinion was rendered). The legislature was required to enact a budget prior to the start of the fiscal year, and it sought our opinion concerning the effective dates of the various bills, including the initiated bill, in order to carry out that responsibility. There is no such immediacy present here. L.D. 751, if enacted by the people in referendum, will not be effective until 1996.

Art. IV, pt. 3, section 18 reserves to the people the power to enact legislation directly through the initiative and referendum process. We should not interfere with or handicap the people's right of franchise by offering an opinion on the enforceability of an initiated measure before the electorate has expressed its views. See Allen v. Quinn, 459 A.2d 1098, 1102-03 (Me. 1983); see also Farris, 143 Me. at 231, 60 A.2d at 911. As the United States Supreme Court has said, "The best teaching of this Court's experience admonishes us not to entertain constitutional questions in advance of the strictest necessity." Parker v. Los Angeles County, 338 U.S. 327, 333 (1949). Other state courts have similarly concluded that it is inappropriate to address the constitutionality of an initiative measure before it has been presented to the voters. See, e.g., Tilson v. Mofford, 737 P.2d 1367, 1369 (Ariz. 1987) (court is powerless to predetermine constitutional validity of substance of an initiated measure but can determine procedural issues); Associated Taxpayers of Idaho, Inc. v. Cenarrusa, 725 P.2d 526, 527 (Idaho 1986) (Donaldson, C.J. specially concurring) (any action by the court on the initiated measure's constitutionality is premature and interferes with the people's right to exercise their franchise); Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 827 (Mo. 1990) (court's preelection function limited to whether constitutional requirements relating to procedure and form of initiative petitions have been met); State ex rel. Montana Citizens v. Waltermire, 729 P.2d 1283, 1285 (Mont. 1986) (court will assume jurisdiction over preelection challenges only when challenge is procedural or measure is unconstitutional on its face); State ex rel. Cramer v. Brown, 454 N.E.2d 1321, 1322 (Ohio 1983) (court will not consider preelection claim of unconstitutionality).

The voters may reject this legislation. Even if enacted, the measure is not effective until 1996. Its constitutionality can then be determined in the "context of [a] concrete, fully developed factual situation and with[] the benefits of adversary evidentiary and [fully developed] legal presentations." Opinion of the Justices, 437 A.2d at 610.

We answer Question 3 in the affirmative. We respectfully decline to answer Questions 1 and 2.

Dated: April 26, 1993

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

Was read and with accompanying papers ordered placed on file.

On motion of Representative Gwadosky of Fairfield, the following was removed from the Tabled and Unassigned matters:

"An Act to Impose Term Limitations on Legislators, Constitutional Officers and the State Auditor" (I.B. 1) (L.D. 751)
TABLED - March 10, 1993 by Representative Gwadosky of Fairfield.
PENDING - Reference

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Men and Women of the House: L.D. 751 is the initiated referendum citizens' initiative. You have seen the opinion of the Supreme Court Justices, Article IV, part third, section 18 of the Constitution which indicates that this legislature must enact this without amendment or send it out to referendum. My motion now will be to, as we would normally do, refer this to the Joint Standing Committee on State and Local Government for a recommendation back to us, then we will be in a position to act on it before this session has ended.

I now move that L.D. 751 be referred to the Joint Standing Committee on State and Local Government.

Subsequently, (I.B. 1)(L.D. 751) was referred to the Joint Standing Committee on State and Local Government, ordered printed and sent up for concurrence.

The following Communication: (S.P. 426)

MAINE STATE SENATE
AUGUSTA, MAINE 04333

April 21, 1993

The Honorable Dennis L. Dutremble
President of the Senate
116th Legislature

The Honorable John L. Martin
Speaker of the House
116th Legislature

Dear Mr. President and Mr. Speaker:

Please be advised that today 1 bill was received by the Secretary of the Senate.