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ANALYSIS OF CONSTITUTIONAL PROVISIONS
AFFECTING PUBLIC WELFARE IN THE STATE OF
MAINE

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Preface

This bulletin is one of a series presenting State constitutional provisions affecting public welfare, prepared to supplement the State by State digests of public welfare laws so as to provide in abstract form the basis for the public welfare services of the several States.

The provisions quoted are those concerned directly with public welfare administration and such others as may substantially affect a public welfare program, even though only indirectly related. It would be impossible to consider within the limits of this study every remotely connected constitutional provision. The indirectly related provisions included, therefore, have been restricted to those concerning finance, legislation, and the methods of constitutional amendment.

An attempt has been made, by a careful selection of the most recent cases decided by the highest courts of the States, to indicate wherever possible how these provisions have been construed. These cases are included in footnotes appended to the constitutional provisions shown.

It is hoped that these abstracts will be useful to those interested in public welfare questions in indicating how State and local public welfare administration may be affected by constitutional powers and limitations.

Maine

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ANALYSIS OF CONSTITUTIONAL PROVISIONS AFFECTING
PUBLIC WELFARE IN MAINE 1/

I. Incidence of Responsibility for Welfare Program

No provision.

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) All taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally 2/, according to the just value thereof 3/; but the legislature shall have power to levy a tax upon intangible personal property at such rate as it deems wise and equitable without regard to the rate applied to other classes of property. 4/

1. Constitution (1819), with all amendments to February 15, 1937.

2. An act authorizing the taxation of the tangible property within the two cities comprising a pier site district was held valid since the property so taxed would presumably be specially benefited by the improvements. It was held not to impose unequal taxation under this section as "when the benefit and the burden are reasonably proportionate, the constitutional requirement is satisfied". *Hamilton vs. Portland State Pier Site District*, 120 Me. 15, 112 At. 836 (1921).

The Legislature may pass tax laws not merely applicable to all towns; it may direct its attention to the need of a particular town, and compel such town to raise money by taxation, provided the purpose be a public one, such as the common schools, and the tax be apportioned equally within that town, and the town receive the benefit. The "equality" rule of this section is not violated even though the local rate prescribed by the Legislature differs from that prescribed in another town. *Sawyer vs. Gilmore*, 109 Me. 169, 83 At. 673 (1912). See *Brewer Brick Company vs. Brewer*, 62 Me. 62 (1873), footnote 4 below.

3. Assessors' appraisal of property at seventy-five per cent of its market value as determined in the light of the experience and knowledge of the assessors, was held to be an apportionment according to the "just value" within the meaning of this section. *Cumberland County Power & Light Company vs. Inhabitants, etc.*, 125 Me. 138, 131 At. 594 (1926).

4. Constitution, Art. IX, Sec. 8, (amended by Art. XXXVI).

A town pursuant to legislative authorization voted to exempt from taxation for a term of ten years manufacturing and refining (Footnote forwarded)

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II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

(Footnote #4 - Continued)

companies thereafter established. One month later a brick manufacturing company was established and was exempted from the payment of taxes for the first year thereafter. However the next year the company was assessed for and paid taxes, later bringing an action in assumpsit to recover the amount paid, pleading the terms of the above exemption voted by the town.

The court held that inasmuch as this section provides that "all taxes upon real and personal estate . . . shall be apportioned and assessed equally according to the just value thereof" and that section 7 of this same article (see page 4, par. (c)), requires a general valuation of property, such a legislative enactment and also the vote thereunder taken were invalid.

Specifically the court held that the remission of a tax by a town vote was in substance and effect a gift to the exempted party, in this case the brick company. Further that the Constitution does not permit an unequal apportionment and assessment upon real and personal estate without any reference to its just value, and to allow such an exemption "would be to approve unconstitutional taxation for private purposes and to sanction a system which would destroy all uniformity as to the property upon which taxes are to be imposed, and all equality as to the ratio, so far as regards the valuation". *Brewer Brick Company vs. Brewer*, 62 Me. 62 (1873).

The grant of power in this section relating to taxes on realty and personalty is not exclusive; the Legislature is left free to impose other taxes, such as poll taxes (see page 4, par. (c)), excise taxes, and license taxes, either in addition to, or instead of, taxes on property. In *re Railroad Taxation*, 102 Me. 527, 66 At. 726 (1907).

Since an inheritance tax is not a tax upon property, but is an excise on the right or privilege of taking property under a will or by descent, such a tax may be graduated, not being subject to the uniformity requirement of this section. *State vs. Hamlin*, 86 Me. 495, 30 At. 76, 25 L. R. A. 632 (1894).

A tax imposed on the transfer of the estate of every person resident in the State at the time of his death, and subject to taxation under the Federal Revenue Act was held to be an excise tax and not a property tax. In *re Opinion of the Justices*, 137 At. 50 (1927).

A graduated tax upon income, being a tax upon the person, and not upon property, is valid under this section. However, an act imposing a higher rate of taxation on income derived from intangible property than on income derived from other sources would be discriminatory and invalid. In *re Opinion of the Justices*, 178 At. 621 (1935).

II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

(b) Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it. 5/

5. Constitution, Art. I, Sec. 21.

This section refers mainly to the power of eminent domain. It applies just as forcefully, however, to the power of taxation, since the latter "rests upon the sovereign power to appropriate private property of its citizens to public purposes". Therefore, the power of taxation can be exercised only with reference to public use and public exigency, the first to be determined in the first instance by the Legislature and finally by the court, the second to be determined by the Legislature without judicial revision. *Laughlin vs. City of Portland*, 111 Me. 486, 90 At. 318 (1914).

The Legislature requested an opinion as to whether or not it had the authority under the Constitution to pass laws "enabling towns, by gifts of money or loan of bonds, to assist individuals or corporations to establish or carry on manufacturing within or without the limits of towns; and if towns thus authorized may assist private parties, may they go further and establish manufactories entirely on their own account, and run them by the ordinary town officers or otherwise?" The court divided and submitted six opinions. The consensus of these opinions was a reply in the negative to both of the propounded questions. In relation to the first question the majority opinion said "The legislature has no constitutional right to . . . levy a tax or to authorize any municipal corporation to do it, in order to raise funds for any private purpose . . . Taxation is a mode of raising revenue for public purposes. When it is prostituted to objects in no way connected with the public welfare, it ceases to be taxation and becomes plunder." In relation to the second question the same opinion said "Towns are public corporations created and existing only for public purposes, not private corporations for the purposes of traffic or manufacturing". In re *Opinion of the Justices*, 58 Me. 590 (1871).

The State cannot enter upon a commercial enterprise and tax the people for its promotion. However, if the object be to furnish facilities for the citizens in regard to those matters of public necessity, convenience or welfare, which on account of their peculiar character, and the difficulty, and perhaps impossibility, of making provision for them otherwise, it is proper, . . . for the government to provide therefor, and levy taxes for their support. The support and construction of schools, highways, sewers, the aiding of railroads, the supplying of light and water to municipalities are instances of well defined public pur- (Footnote forwarded)

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II. Financial Powers and Limitations (Cont'd)

A. Taxation and Assessments (Cont'd)

(1) State (Cont'd)

(c) While the public expenses shall be assessed on polls and estates, a general valuation shall be taken at least once in ten years. 6/

(d) The Legislature shall never, in any manner, suspend or surrender the power of taxation. 7/

(e) No tax or duty shall be imposed without the consent of the people or of their representatives in the Legislature. 8/

(2) Counties

See par. A, pages 1 to 4 inclusive, and footnotes thereunder.

(3) Other Local Units

See par. A, pages 1 to 4 inclusive, and footnotes thereunder.

(Footnote #5 - Continued)

poses for which taxes may be levied. The supply of fuel when necessity requires, also falls into this class. If however the dominant purpose of an act be for private benefit and not for the "benefit of the people", the power of taxation to promote it does not exist under the Constitution of Maine. In re Opinion of the Justices, 118 Me. 503, 106 At. 865 (1919).

The term "public uses" includes the relief of paupers. Laughlin vs. City of Portland, 111 Me. 486, 90 At. 318 (1914).

6. Constitution, Art. IX, Sec. 7.

See Brewer Brick Company vs. Brewer, 62 Me. 62 (1873), page 1, footnote 4.

7. Constitution, Art. IX, Sec. 9.

All taxes, State, county and municipal, must be levied by the Legislature directly, or under general laws. This does not, however, forbid a municipality to levy a special assessment upon certain lands to the exclusion of others, to pay for improvements which bestow particular benefits on the land assessed. City of Auburn vs. Paul, 84 Me. 212, 24 At. 817 (1892).

Officers of a municipality in levying and collecting municipal, county and State taxes are acting as agents of the State; they have no other powers except those clearly and unmistakably granted by the law-making power, and must proceed strictly in accordance with the authority given. Inhabitants of Town of Frankfort vs. Waldo Lumber Company, 128 Me. 1, 145 At. 241 (1929).

8. Constitution, Art. I, Sec. 22.

II. Financial Powers and Limitations (Cont'd)

B. Exemptions

No provision. 9/

C. Borrowing and Use of Credit

(1) State

The credit of the state shall not be directly or indirectly loaned in any case. 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 \$2,000,000, except for the purposes of building state highways, intrastate, interstate and international bridges 10/; to suppress insurrection, to repel invasion, or for the purposes of war; to provide for the payment of a bonus to Maine soldiers and sailors in the war with Germany 11/; or for the purposes

9. The Legislature may ". . . determine what kinds and classes of property shall be taxed, and what kinds and classes shall be exempt from taxation." In re Opinion of the Justices, 178 At. 621 (1935).

In construing statutes exempting property from taxation all doubt and uncertainty must be resolved against the granting of the exemption. In Maine this is especially true as the Constitution does not expressly define any powers granting exemptions. City of Auburn vs. Young Men's Christian Association, 86 Me. 244, 29 At. 992 (1894).

A statute exempted from taxation such property of benevolent and charitable associations as might be used by them for their own purposes. A camp-meeting association classified under this category, claimed as exempt, property of the association let for stabling horses and housing members of the association. The court held such property not exempt on the ground that it was being used for commercial purposes and not in furtherance of the aims of the association. Inhabitants of Foxcroft vs. Piscatagius Valley Camp-Meeting Association, 86 Me. 78, 29 At. 951 (1893).

See Brewer Brick Company vs. Brewer, 62 Me. 62 (1873), page 1, footnote 4.

10. Art. LVIII, authorizes bond issues not to exceed \$36,000,000 at any one time, the proceeds to be used for State highway purposes.

11. Art. XLV, authorizes bond issues not to exceed \$3,000,000, the proceeds to be devoted exclusively to payment of a bonus to Maine soldiers and sailors in the war with Germany.

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II. Financial Powers and Limitations (Cont'd)

C. Borrowing and Use of Credit (Cont'd)

(1) State (Cont'd)

of building and maintaining public wharves and for the establishment of adequate port facilities in the state of Maine 12/; but this amendment 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. 13/

(2) Counties

No provision.

(3) Other Local Units

No city or town having less than forty thousand inhabitants, according to the last census taken by the United States, shall hereafter create any debt or liability, which single or in the aggregate, with previous debts or liabilities shall exceed five per centum of the last regular valuation of said city or town: provided, however, that cities having a population of forty thousand or more, according to the last census taken by the United States, may create a debt or liability which single or in the aggregate, with previous debts or liabilities, shall equal seven and one-half per cent of the last regular valuation of said city, that cities of forty thousand inhabitants, or over, may, by a majority vote of their city government, increase the present rate of five per centum by one-fourth of one percent in any one municipal year, until, in not less than ten years, the maximum rate of seven and one-half percent is reached, that any city failing to take the increase in any one municipal year then the increase for that year is lost and no increase can be made until the next year as provided above, and provided further, 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 the money raised by taxes during the year in which they were made. 14/

12. Art. XLI, authorizes serial bond issues not to exceed \$1,150,000 to be devoted to the building and maintaining of public wharves and the establishment of adequate port facilities.

13. Constitution, Art. LV.

Art. LVI, provides for serial bond issues not to exceed \$2,000,000, the proceeds to be devoted to the construction and equipment of State buildings, or the remodeling or extension of any plant which is part of State-owned property.

14. Constitution, Art. XXXIV.

This section applies to cities and towns only, and not to any other form of municipal or quasi-municipal bodies. Thus
(Footnote forwarded)

II. Financial Powers and Limitations (Cont'd)

D. Appropriations and Expenditures

(1) State

No money shall be drawn from the treasury, but by warrant from the Governor and Council, and in consequence of appropriations made by law; . . . 15/

(2) Counties

No provision.

(3) Other Local Units

No provision.

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

(1) The legislative power shall be vested in two distinct branches, a house of representatives, and a senate . . . 16/

(2) The legislature shall convene on the first Wednesday of January, biennially, and, 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 this constitution nor to that of the United States. 17/

B. Special Sessions of Legislature

(The Governor) may, on extraordinary occasions, convene the Legislature; . . . 18/

(Footnote #14 - Continued)

bonds issued by the State Pier Site District, a corporation, which included a city, were not debts of the city within the meaning of this section, although such bonds were to be paid in part by taxes levied on the property within the city. *Hamilton vs. Portland State Pier Site District*, 120 Me. 15, 112 At. 836 (1921).

See page 3, footnote 5.

- 15. Constitution, Art. V, Part 4, Sec. 4.
- 16. Constitution, Art. XXXI.
- 17. Constitution, Art. XXXI.
- 18. Constitution, Art. V, Part 1, Sec. 13.

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III. Provisions Affecting Legislation (Cont'd)

C. Powers of Initiative and Referendum

(1) Initiative

(a) . . . the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature . . . 19/

(b) The electors may propose to the legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the state constitution, by written petition addressed to the legislature or to either branch thereof and filed in the office of the secretary of state or presented to either branch of the legislature at least thirty days before the close of its session. Any measure thus proposed by not less than twelve thousand electors, unless enacted without change by the legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the legislature, and in such manner that the people can choose between the competing measures or reject both. . . . If the measure initiated is enacted by the legislature without change, it shall not go to a referendum vote unless in pursuance of a demand made in accordance with the preceding section. The legislature may order a special election on any measure that is subject to a vote of the people. The governor may, and if so requested in the written petitions addressed to the legislature, shall, by proclamation, order any measure proposed to the legislature by at least twelve thousand electors as herein provided, and not enacted by the legislature without change, referred to the people at a special election to be held not less than four or more than six months after such proclamation, otherwise said measure shall be voted upon at the next general election held not less than sixty days after the recess of the legislature, to which such measure was proposed. 20/

(c) 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;

19. Constitution, Art. IV, Part 1, Sec. 1, (amended by Art. XXXI).

The initiative and referendum provisions are not applicable to a resolution ratifying a proposed amendment to the Federal Constitution since Art. V of that Constitution declares that the method of ratifying amendments to it shall be by the State Legislatures. In re Opinion of the Justices, 118 Me. 544, 107 At. 673 (1919).

20. Constitution, Art. IV, Part 3, Sec. 18, (amended by Art. XXXI).

See par. (c) immediately following for definitions of electors, people, recess of Legislature, general election, measure, and written petition.

III. Provisions Affecting Legislation (Cont'd)C. Powers of Initiative and Referendum (Cont'd)(1) Initiative (Cont'd)

'general election' means the November election for choice of presidential electors or the September election for choice of 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 The petitions shall set forth the full text of the measure requested or proposed. The full text of a measure . . . 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. 21/

(d) . . . The veto power of the governor shall not extend to any measure approved by vote of the people, and any measure initiated by the people and passed by the legislature without change, if vetoed by the governor and if his veto is sustained by the legislature shall be referred to the people to be voted on at the next general election . . . 22/

(e) The city council of any city may establish the initiative and referendum for the electors of such city in regard to its municipal affairs, provided that the ordinance establishing and providing the method of exercising such initiative and referendum shall not take effect until ratified by vote of a majority of the electors of said city, voting thereon at a municipal election. Provided, however, that the legislature may at any time provide a uniform method for the exercise of the initiative and referendum in municipal affairs. 23/

(2) Referendum

(a) . . . (The people) reserve power at their own option to approve or reject at the polls any act, bill, resolve or resolution passed by the joint action of both branches of the legislature . . . 24/

(b) Upon written petition of not less than ten thousand electors, addressed to the governor and filed in the office of the secretary of state within ninety days after the recess of the legislature, requesting that one or more acts, bills, resolves or

21. Constitution, Art. IV, Part 3, Sec. 20, (amended by Art. XXXI).

22. Constitution, Art. IV, Part 3, Sec. 19, (amended by Art. XXXI).

See page 8, par. (c), for definitions of measure, and people.

23. Constitution, Art. IV, Part 3, Sec. 21, (amended by Art. XXXI).

24. Constitution, Art. IV, Part 1, Sec. 1, (amended by Art. XXXI).

III. Provisions Affecting Legislation (Cont'd)

C. Powers of Initiative and Referendum (Cont'd)

(2) Referendum (Cont'd)

resolutions, or part or parts thereof passed by the legislature, but not then in effect by reason of the provisions of the preceding section (see par. (3) below) be referred to the people, such acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until thirty days after the governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a general or special election . . . 25/

(c) Any measure referred to the people and approved by a majority of the votes given thereon shall, unless a later date is specified in said measure, take effect and become a law in thirty days after the governor has made public proclamation of the result of the vote on said measure, which he shall do within ten days after the vote thereon has been canvassed and determined . . . 26/

(d) See page 9, par. (e).

D. Legislative Enactment

(1) The legislature . . . 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 this constitution nor to that of the United States. 27/

(2) . . . The legislature may enact measures expressly conditioned upon the people's ratification by a referendum vote. 28/

(3) Bills, orders, or resolutions, may originate in either house, and may be altered, amended or rejected in the other; but all bills for raising a revenue shall originate in the House of

25. Constitution, Art. IV, Part 1, Sec. 17, (amended by Art. XXXI).

See page 8, par. (c) for definitions of petition, electors, recess of Legislature, people, general election.

26. Constitution, Art. IV, Part 1, Sec. 19, (amended by Art. XXXI).

27. Constitution, Art. IV, Part 3, Sec. 1.

28. Constitution, Art. IV, Part 3, Sec. 19, (amended by Art. XXXI).

The measure shall be voted on at the next general election, if it occurs within six months after the suspension of the measure by such petition; in case of there being no general election within six months, and if so requested, the Governor shall call a special election for the purpose not less than four nor more than six months after the suspension of the measure by such petition, and proclamation thereof. Ibid.

The Legislature may not amend an act, the operation of which is suspended during its submission to the people by referendum, since the right of the voters to pass upon the act is absolute, and cannot be abridged by further action of the Legislature. In re Opinion of the Justices, 174 At. 853 (1933).

III. Provisions Affecting Legislation (Cont'd)D. Legislative Enactment (Cont'd)

Representatives, but the Senate may propose amendments as in other cases; provided, that they shall not, under color of amendment, introduce any new matter, which does not relate to raising a revenue. 29/

(4) Every bill or resolution having the force of law, to which the concurrence of both houses may be necessary . . . which shall have passed both houses, shall be presented to the Governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the house, in which it shall have originated, which shall . . . proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass it, it shall be sent together with the objections, to the other house, by which it shall be reconsidered, and, if approved by two-thirds of that house, it shall have the same effect, as if it had been signed by the Governor; . . . If the bill or resolution shall not be returned by the Governor within five days, (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it, unless the Legislature, by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after their next meeting. 30/

(5) No act or joint resolution of the legislature, . . . shall take effect until ninety days after the recess of the legislature passing it, unless in case of emergency, (which with the facts constituting the emergency shall be expressed in the preamble of the act), the legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct. An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include (1) an infringement of the right of home rule for municipalities, (2) a franchise or a license to a corporation or an individual to extend longer than one year, . . . 31/

29. Constitution, Art. IV, Part 3, Sec. 9.

"A bill for raising revenue is one for levying taxes in the strict sense of the word, and not a regulatory measure which incidentally creates revenue." In re Opinion of the Justices, 178 At. 620 (1935).

30. Constitution, Art. IV, Part 3, Sec. 2.

31. Constitution, Art. IV, Part 3, Sec. 16, (amended by Art. XXXI).

Excepted from the prohibitions of this section are "such orders or resolutions as pertain solely to facilitating the performance of the business of the legislature, of either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law". Ibid.

An act merely declaring an emergency but not setting forth the facts constituting the emergency would not take effect immediately. This section imposes a definite limitation upon the Legislature in this regard. Payne vs. Graham, 118 Me. 251, 107 At. 709 (1919).

(Footnote forwarded)

III. Provisions Affecting Legislation (Cont'd)

D. Legislative Enactment (Cont'd)

(6) The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation. 32/

(7) The laws shall not be suspended but by the Legislature or its authority. 33/

(8) There shall be a Council, to consist of seven persons, citizens of the United States, and residents of this State, to advise the Governor in the executive part of government, whom the Governor shall have full power, at his discretion, to assemble; and he with the Councillors (Councilors), or a majority of them, may from time to time, hold and keep a council, for ordering and directing the affairs of State, according to law. 34/

(9) (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, Council, Senate, or House of Representatives. 35/

(Footnote #31 - Continued)

Under that part of this section which provides that an emergency bill shall not include an infringement of the right of home rule for municipalities, an emergency act giving the control of a police department of a city having entire control of same, to a commission appointed by the Governor, was held invalid. The right of the Legislature to grant, repeal, or withhold home rule is qualified to the extent that if the people of a municipality possess the right of home rule, the Legislature may not take from them the right to exercise the referendum, by attaching an emergency clause to an act, the effect of which would be to abridge such right. *Lemaire vs. Crockett*, 116 Me. 263, 101 At. 302 (1917).

32. Constitution, Art. IV, Part 3, Sec. 13.

See *Sawyer vs. Gilmore*, 109 Me. 169, 83 At. 673 under footnote 2, page 1.

33. Constitution, Art. I, Sec. 13.

34. Constitution, Art. V, Part 2, Sec. 1.

Art. V, Part 1, Sec. 8 of the Constitution authorizes the appointment by the Governor "with the advice and consent of the council", of all judicial officers; the section does not, however, say by whom such officers shall be removed. In a case involving the removal of a court reporter by the Governor alone, the court held the council to be an integral part of the executive department; that while the Governor is at its head, he does not control the department; that where the Constitution required the consent of the Council to an appointment it necessarily required similar consent to a removal. *Opinion of the Justices*, 72 Me. 542 (1881).

35. Constitution, Art. VI, Sec. 3.

(Footnote forwarded)

IV. Constitutional Amendment or RevisionA. By Proposal of Legislature or People

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 September 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 second Monday in September 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. 36/

B. By Constitutional Convention

The Legislature shall, by a two-thirds concurrent vote of both branches, have the power to call constitutional conventions, for the purpose of amending this constitution. 37/

(Footnote #35 - Continued)

The advisory opinions mentioned in this section do not have the binding force of a judgment; yet they carry weight in proportion to the reasons upon which they are based. *Sawyer vs. Gilmore*, 109 Me. 169, 83 At. 673 (1912). In re Opinion of the Justices, 123 Me. 573, 121 At. 902 (1923).

The justices "are not obliged, and it would not be proper for them, to answer questions of policy or expediency, or any question other than 'important questions of law' . . . and however important may be the questions of law submitted, if it clearly appears to the justices that (a solemn) occasion does not exist, it is their duty to decline to give their opinion . . .". Thus the question, whether the office of fish and game warden is an "office of profit under the state" within the provisions of the Constitution prohibiting a person holding such office from having a seat in the Legislature, was held not to be submitted upon a solemn occasion since the Legislature had finally adjourned at the time the question was submitted. Opinions of the Justices, 95 Me. 564, 51 At. 224 (1901).

36. Constitution, Art. XXXVII.

See page 8, par. (b), providing for the people's power to initiate bills, resolves and resolutions, but specifically excluding amendments to the State Constitution.

37. Constitution, Art. IV, Part 3, Sec. 15.





