



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

July 17, 2015

Chief Justice Saufley
Associate Justices of the Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, Maine
04101-4125

To the Honorable Justices of the Supreme Judicial Court:

Please accept my request for an Opinion of the Justices of the Maine Supreme Judicial Court pursuant to Article VI, Section 3 of the Maine Constitution. I seek your advice upon important questions of law regarding my constitutional obligation to faithfully execute the laws, specifically, 65 bills vetoed by me on July 16, 2015, 17 of which are emergency legislation.

When the Legislature adjourned on June 30 with no date to reconvene, I was prevented from returning the bills to their houses of origin. This triggered the constitutional provision that I could hold the bills until the Legislature reconvened for three consecutive days. The Legislature reconvened on July 16, providing the earliest opportunity to return the bills since the Legislature's adjournment. I promptly returned all 65 vetoes to their respective houses of origin on that date.

The Legislature's failure to timely extend the first regular session beyond the statutory adjournment date of June 17, then adjourning on June 30 with no date of return, has resulted in a dispute over the validity of the 65 bills. Now that the Legislature has refused to consider the vetoes, insisting that the bills have already become law, my constitutional duty as Governor to "take care that the laws be faithfully executed" is in question. I must know whether the 65 bills have become law.

To determine this, I must know what type of adjournment prevents the return of a bill to the Legislature. I must know whether the Legislature triggered the constitutional three-day procedure for the exercise of the Governor's veto. And finally, I must know whether the 65 bills I returned to the Legislature on July 16 were presented properly before that body for reconsideration.



PRINTED ON RECYCLED PAPER

FACTUAL BACKGROUND

The first regular session of the 127th Legislature began on December 3, 2014. Over the course of the session, the Legislature enacted bills and presented them to me for action. I signed numerous bills into law; I allowed others to become law without my signature; I vetoed many others. The statutory adjournment date for this session was June 17, 2015. Despite knowing the statutory adjournment date – a date published in numerous Legislative calendars – the Legislature failed to timely extend the session by the close of the June 17 meeting. This is so even though a Joint Order to extend the first regular session by five legislative days was prepared on June 17 (Exhibit 1, SP 549). That Joint Order was never presented, however. Instead of timely extending the first regular session, the Legislature simply adjourned and returned on June 18, creating a question around its legal authority to reconvene the session at all. A verbal motion to extend the session (which had arguably already ended by operation of law) was passed in the House (Exhibit 2, Roll Call #296) and in the Senate (Exhibit 3, Remarks, and Exhibit 4, Roll Call #288)¹. The Legislature then met on June 19, 22, 23, and 24. On June 24, the Legislature attempted, by Joint Order, to further extend the session by five more legislative days (Exhibit 5, HP 991). At the close of that day, the Senate and House adjourned until June 30, 2015 at 10:00 in the morning (Exhibit 6, SP 550). In contrast, at the close of the June 30 meeting, the Legislature, by Joint Order, adjourned “... until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business or consider possible objections of the Governor” (Exhibit 7, SP 556). The Joint Order did not set any date certain on which the Legislature would reconvene.

Pursuant to the Maine Constitution, Article IV, Pt. 3, §2, when the Legislature is in session, I have 10 days (excepting Sundays) in which to return bills with my objections to their legislative houses of origin. The Constitution also provides, however, that if “the Legislature by their adjournment prevent [a bill’s] return”, there is an alternative veto process that ensures that the Governor has the opportunity to exercise his veto power and that the Legislature has time to reconsider the bill in light of the Governor’s objections. That process allows the Governor to return the bills “within 3 days after the next meeting of the same Legislature which enacted the bill”

Prior to June 30, I had received 23 bills from the Legislature, six of which were emergency bills. The respective deadlines for return of these bills were all later than June 30. Just prior to its adjournment on June 30, the Legislature presented me with an additional 58 bills, 14 of which were emergency bills. The deadline for the return of these bills would have been July 11, 2015 if the Legislature had been in session.

Instead, the Legislature conditionally adjourned on June 30 with no date for its return. Moreover, the indefinite condition that could have prompted its return – the call of the Senate President and Speaker of the House – did not come to pass on or before July 11. In fact, while there were unofficial reports that the legislators would reconvene on July 16, the legislative record confirms that the date for reconvening was ambiguous at best (Exhibit 8, House

¹ The failure of the Legislature to properly extend the first regular session along with their subsequent attempt to do so after the session was statutorily adjourned was not discovered by the Governor’s counsel until early July.

Legislative Record on HP 991, Rep. Fredette's remarks). By their adjournment without a set date of return, I was prevented from returning these bills to their houses of origin.

Believing these circumstances triggered the constitutional three-day procedure², I held the bills until the Legislature reconvened, understanding that the Constitution afforded me the opportunity to hold the bills until the Legislature reconvened for four consecutive days. *See Opinion of the Justices*, 437 A.2d 597 (1981) and *Opinion of the Justices*, 484 A.2d 999 (1984). I had the opportunity to consider the bills and draft objections. Consequently, when the Legislature reconvened on July 16, I returned them within the time allowed me under the Constitution. July 16 was the very first opportunity after the Legislature's June 30 adjournment when I could return the bills. I returned the bills to their appropriate houses of origin with a request to the Legislative leadership that they reconsider the bills in light of my objections. The Speaker of the House refused to reconsider the bills, maintaining that they were laws that at his direction had already been chaptered. After refusing to reconsider the bills and my objections, the Legislature adjourned on July 16, 2015, using the words, "adjourned without day" in the House and "adjourned *sine die*" in the Senate, respectively.

I have a constitutional duty, as Governor, to "take care that the laws be faithfully executed" (Me. Const. Art. V, Pt. 1, §12). Accordingly, I must know whether the 65 bills I was prevented by the Legislature's adjournment from returning to their houses of origin by July 11 have become law. This is a particularly pressing issue because 17 of these bills are emergency legislation, meaning they are effective immediately after the conclusion of the session. There is no dispute that at this time, the first regular session of the 127th Legislature is over; the exact date of the end of the session is likely disputed, however. I must know whether the three-day procedure was triggered by the Legislature's action or inaction during and/or after the session. If so, the exercise of my veto power and the return of the bills on July 16 kept those bills from "having the same force and effect as if" I had signed them.

With great deference, therefore, I respectfully submit to you that these facts present the "important questions of law" and "solemn occasion" necessary to invoke your constitutional authority to issue advisory opinions under Article VI, Section 3 of the Maine Constitution. There can be no doubt that the validity of the laws at issue is a constitutionally important question. Likewise, according to a 1975 Opinion of the Justices, "for it to be a solemn occasion ... the questions must not be 'tentative, hypothetical and abstract'" *Opinion of the Justices*, 330 A.2d 912, 915 (Me. 1975). "Subjects of advisory opinions must be of 'instant, not past nor future concern; things of live gravity.'" *Opinion of the Justices*, 134 Me. 510, 513, 191 A. 487 (1936). The questions of whether the constitutional three-day procedure was triggered by the Legislature's action or inaction, including but not limited to its failure to legally extend the session and/or its conditional "adjournment without day" raise sufficiently important legal questions that must be answered because the faithful discharge of my constitutional duty to

² See *Bands of the State of Washington v. United States and Okanogan, Methow, San Poelis, Nespelem, Colville, and Lake Indian Tribes v. US*, 279 U.S. 655 (1929) and *Wright v. United States*, 302 U.S. 583 (1938). While these cases address "pocket vetoes" pursuant to the United States Constitution and the instant situation is not a question of a pocket veto, the language and analysis used by the U.S. Supreme Court is pertinent to the questions raised in this letter.

execute numerous laws depends on the answers. Moreover, the guidance I seek is needed with respect to matters of instant concern and live gravity.

QUESTIONS

The Constitution of the State of Maine provides in pertinent part,

If the bill or resolution shall not be returned by the Governor within 10 days (Sundays excepted) after it shall have been presented to the Governor, it shall have the same force and effect as if the Governor 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 3 days after the next meeting of the same Legislature which enacted the bill or resolution ...

Me. Const. Art. IV, pt. 3, §2.

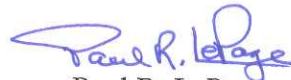
The Constitution further provides, in pertinent part, “The Legislature shall enact appropriate statutory limits on the length of the first regular session ...” Pursuant to this constitutional mandate, the Legislature enacted 3 M.R.S. §2, which provides in pertinent part, “The first regular session of the Legislature, after its convening, *shall adjourn no later than the 3rd Wednesday in June ...*” [emphasis added].

In order to fulfill my constitutional obligation to faithfully execute duly passed, constitutionally sound laws, I must have answer[s] to the following question[s]:

- 1) What form of adjournment prevents the return of a bill to the Legislature as contemplated by the use of the word, adjournment, in Art. IV, pt. 3, §2 of the Maine Constitution?
- 2) Did any of the action or inaction by the Legislature trigger the constitutional three-day procedure for the exercise of the Governor’s veto?
- 3) Are the 65 bills I returned to the Legislature on July 16 properly before that body for reconsideration?

In light of the constitutional importance of these questions as well as the need now for guidance on how to appropriately meet my constitutional duty to faithfully execute the laws, I request the Court provide its answers to these questions as promptly as the Court is able. I would be happy to expeditiously provide any briefing requested by the Justices.

Sincerely,



Paul R. LePage
Governor