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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

August 13, 1996

The Honorable Jeffrey H. Butland
President, Maine Senate
3 State House Station
Augusta, Maine 04333-0003

Dear President Butland:

I am writing in response to your request of August 6, 1996 concerning whether, if the Legislature wishes to enact a competing measure to initiated legislation, it is required by the Constitution to do so by a two-thirds vote. Since the Legislature will be asked to enact a competing measure at an upcoming session in early September of this year, and since that session will be less than 90 days from the date of the general election in November at which the competing measure and the initiated measure would be placed before the voters, you ask whether the bill would have to be considered emergency legislation in order to be adopted in time to be put on the November ballot. For the reasons which follow, it is the opinion of this Department that a competing measure need only be enacted by a simple majority.

The enactment of a competing measure to initiated legislation is governed by Article IV, Part Third, Section 18(2) of the Maine Constitution, which provides, in pertinent part:

> The [initiated] measure thus proposed, 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.

There is no indication in this provision that the framers of the direct democracy provisions of the Maine Constitution intended that anything other than a simple majority be required for the enactment of a competing measure to initiated legislation by the Legislature. When the Constitution requires the Legislature to act

by a two-thirds vote, it says so. See, e.g., Me. Const. art. IV, pt. 3, § 2 (two-thirds vote required to override gubernatorial veto); art. IV, pt. 3, § 16 (two-thirds vote required for enactment of emergency legislation, cutting off the "people's veto"); art. IX, § 14 (two-thirds vote required for enactment of bond issue); art. X, § 4 (two-thirds vote required to propose amendments to the Constitution). Since there is no such provision in the constitutional provision dealing with the enactment of competing measures to initiated legislation quoted above, there is no requirement that a competing measure be enacted by a super majority.

This conclusion is not affected by the provisions of the Maine Constitution concerning emergency legislation, Article IV, Part Third, Section 16. The purpose of such legislation is to cut off the people's veto, provided for by Article IV, Part Third, Section 17, by making emergency legislation effective immediately upon approval by the Governor rather than 90 days after the recess of the legislative session which enacted it, a period provided to permit the electors to employ the procedures set out in section 17 for the people's veto. A competing measure to initiated legislation, which is authorized by an entirely different provision of the Constitution, is not effective immediately upon enactment and therefore is not affected by the procedure for emergency legislation.

I hope the foregoing answers your question.

Sincerely,

ANDREW KETTERER
Attorney General

AK/tt

cc: Governor Angus S. King, Jr.
Speaker Dan A. Gwadosky