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April 26, 1995

Senator Willis A. Lord
Representative Richard A. Gould
Chairs, Joint Standing Committee on
Natural Resources
State House Station #115
Augusta, ME 04333

Dear Senator Lord and Representative Gould:

I am writing in response to your inquiry of April 19, 1995 asking two questions regarding Legislative Document 716, "AN ACT to Repeal the Motor Vehicle Emission Inspection Program," initiated legislation currently pending before the Legislature pursuant to Article IV, Part Third, Section 18 of the Maine Constitution. You have asked what the effective date of this legislation would be if it were enacted by the Legislature, and whether the Legislature may constitutionally enact the measure as an emergency. For the reasons which follow, it is the opinion of this Department that if enacted by the Legislature, the bill would not take effect until 90 days following the recess of the current session of the Legislature, but that the Legislature may enact it as an emergency measure, making it effective upon approval by the Governor.

With regard to the effective date of the measure, Article IV, Part Third, Section 16 of the Maine Constitution provides that "No Act or joint resolution of the Legislature . . . shall take effect until 90 days after the recess of the session of the Legislature in which it was passed, . . ." The problem posed by your inquiry is that, unlike ordinary legislation, L.D. 716 is before the Legislature as an initiated measure pursuant to Article IV, Part Third, Section 18 of the Maine Constitution. That section provides that, with regard to measures proposed by the electors of the State, any "measure thus proposed, unless enacted without change by the Legislature at the session which it is presented, shall be submitted to the electors . . . ." The question, therefore, is whether if the Legislature enacts an initiated measure under Section 18, such action would constitute an "Act" of the Legislature under Section 16, meaning that it does not take effect until 90 days after the recess of the session of the Legislature passing it.

In the view of this Department, such a measure would constitute such an "Act." The purpose of the provision in Section 16 suspending the operation of legislation until 90 days after the recess of the Legislature is to allow for the operation of Article IV, Part Third, Section 17 of the Maine Constitution, whereby the electors may seek to prevent any legislation enacted by the Legislature from becoming law by exercising the "people's veto." That section provides that during the 90-day period citizens objecting to a particular measure passed by the Legislature may secure a requisite number of signatures, and thereby require the measure to be submitted to the voters for their approval at a general election. If an initiated measure were enacted by the Legislature, and if it were effective immediately, the possibility of the people's veto would be eliminated. It does not appear that this would have been the intention of the drafters of these direct democracy amendments to the Maine Constitution, all of which were enacted together in 1908. Me. Const., Amendment XXXI (effective Jan. 9, 1909). It is quite conceivable that one group of electors would succeed in gathering sufficient signatures to invoke the direct initiative process, and the Legislature would enact the measure thus proposed without change, but that another group of citizens might seek to invoke the provisions of the people's veto to prevent the legislation from becoming law. That being the case, there is no difference, for purposes of the effective date provision of Section 16, whether an "Act" of the Legislature is prompted by a direct initiative.

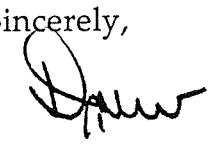
This is not to say, however, that the Legislature is without power to make the initiated legislation effective upon its enactment. Article IV, Part Third, Section 16 also provides that "in case of emergency, the Legislature shall, by a vote of 2/3 of all the members elected to each House," pass such a measure, in which case it shall take effect immediately upon such passage. The question posed by your second inquiry is whether the provision of Section 18(2) that, in order to prevent the measure from going to the electors, the Legislature must enact it "without change" prevents the Legislature from enacting it as emergency legislation. In the view of this Department, the Legislature would not be so prevented. The enactment of the legislation pursuant to the emergency provisions of Section 16 would not affect the substance of the legislation, only its effective date. While it is possible that the initiators might have included an effective date of their own in their initiated bill, the proposal in this case, L.D. 716, does not contain any such provision. It would thus not violate the intention of the initiators to enact the measure on an emergency basis, and consequently to do so would not constitute a "change," within the meaning of Section 18(2). See generally McCaffrey v. Gartley, 377 A.2d 1367 (Me. 1977) (Legislature may pass emergency legislation which might otherwise constitute a "competing measure" with pending initiated legislation).

In sum, therefore, if the Legislature enacts L.D. 716 without complying with the emergency requirements of Section 16, the bill will become effective 90 days after the session of the Legislature. If the Legislature chooses, it may enact the measure as

an emergency legislation, in which case it would become effective upon its approval by the Governor.

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



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