

STATE OF MAINE

In Senate

WHEREAS, the Constitution of Maine, Article VI, Section 3 provides for the Justices of the Supreme Judicial Court to render their opinion on important questions of law and upon solemn occasions; and

WHEREAS, it appears to the 131st Legislature that the following are important questions of law and that this is a solemn occasion; and

WHEREAS, the Constitution of Maine, Article IV, Part Third, Section 18 provides the ability of electors to initiate and propose to the Legislature any bill, resolve or resolution and further provides the procedures to be followed by the initiators, including filing the petition for a direct initiative of legislation, addressed to the Legislature, with the Secretary of State within a specified number of days after the convening of a regular session; and

WHEREAS, the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2 provides that the Legislature must be given the opportunity to act on the measure: "The 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...recommendation of the Legislature" [emphasis added]; and further that "[i]f the measure initiated *is enacted by the Legislature without change*, it shall not go to a referendum vote" [emphasis added]; and

WHEREAS, the Constitution of Maine, Article IV, Part Third, Sections 1 and 4 grant the Legislature the exclusive authority to set its own rules of procedure, including such rules establishing the manner in which initiated bills may be presented to the Legislature for consideration; and

WHEREAS, between the convening of the 131st Legislature and March 22, 2023, the Secretary of State certified as valid 4 measures proposed by electors; and

WHEREAS, on February 16, 2023, the Secretary of State transmitted 2 of the measures to the Legislature to be produced by the Office of the Revisor of Statutes as legislative documents for consideration by the Legislature; and

WHEREAS, on March 22, 2023, the Secretary of State transmitted the other 2 measures to the Legislature to be produced by the Office of the Revisor of Statutes as legislative documents for consideration by the Legislature; and

WHEREAS, before any measure thus transmitted was produced as a legislative document and presented to the Legislature, the First Regular Session of the 131st Legislature adjourned on March 30, 2023; and

WHEREAS, prior to its adjournment, the First Regular Session of the 131st Legislature passed a joint order carrying over to a subsequent session of the 131st Legislature "...all matters not finally disposed of at the time of adjournment...in the possession of the Legislature, including working papers and drafts in the possession of nonpartisan staff offices"; and

WHEREAS, among the working papers and drafts in the possession of the nonpartisan staff office the Office of the Revisor of Statutes at the time of adjournment were the 4 measures not yet prepared as legislative documents; and

WHEREAS, the 131st Legislature convened in special session on April 5, 2023; and

WHEREAS, on April 10, 2023, 2 of the measures, as prepared by the Office of the Revisor of Statutes, were transmitted to the Clerk of the House, given Legislative Document numbers, L.D. 1610 and L.D. 1611, and ordered printed by the Clerk of the House with the following statement "Transmitted to the Clerk of the 131st Maine Legislature by the Secretary of State on April 10, 2023 and ordered printed."; and

WHEREAS, these 2 measures were placed on the Advance Journal and Calendar of the House of Representatives and presented to the Legislature on April 11, 2023; and

WHEREAS, those 2 measures had not previously been printed and presented to the Legislature in either the First Regular Session or the First Special Session of the 131st Legislature; and

WHEREAS, Rule 401 of the Joint Rules of the 131st Legislature provides that a bill or resolve is not considered to be "in the possession of the Legislature" until "after it is printed"; and

WHEREAS, on April 11, 2023, the Secretary of State issued 4 proclamations of the Governor proclaiming that an election be held for all 4 measures, calling into question the ability of the Legislature to thereafter consider these measures as provided by the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2; and

WHEREAS, there are now questions before the Legislature regarding the constitutionality of those proclamations and the efficacy of any actions the Legislature may take to enact the measures; and

WHEREAS, as it considers action on the initiated bills, it is important that the Legislature be informed as to the legal questions raised in this order; now, therefore, be it

ORDERED, the House concurring, that, in accordance with the provisions of the Constitution of Maine, the Senate and the House of Representatives respectfully request the Justices of the Supreme Judicial Court to give their opinion to the Senate and the House of Representatives on the following questions of law:

Question 1. Is the mere transmittal of a measure by the Secretary of State sufficient to constitute "present[ation] to the Legislature" within the meaning of the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2, notwithstanding that at the time it was transmitted the measure did not exist as a legislative document, had not been printed pursuant to Joint Rule 401, had not appeared on any legislative calendar, and that neither the full House nor full Senate were made aware that the measure was in possession of the Legislature until approximately 53 days after transmittal?

Question 2. If the answer to Question 1 is in the affirmative, did the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2 preclude the 131st Legislature, as assembled in the First Regular Session, from carrying the measure over for consideration in the First Special Session?

Question 3. If the answer to Question 2 is in the negative, does the Legislature's Constitutional power enumerated in Article IV, Part Third, Section 1 to "make and establish all reasonable laws and regulations for the defense and benefit of the people of this State" include the power to consider and enact the measure into law during the First Special Session?

Question 4. If the answer to Question 3 is in the affirmative and a measure is thus enacted by the First Special Session of the Legislature without change, must the identical measure identified in a Proclamation executed by the Governor on April 7, 2023 "not go to a referendum vote" pursuant to the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2?

Question 5. If the answer to Question 4 is in the negative, is a bill thus enacted by the First Special Session of the Legislature a competing measure to an identical measure placed on the ballot by proclamation of the Governor on April 7, 2023, as described in the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2?

SPONSORED BY: _____

(President JACKSON, T.)

COUNTY: Aroostook