# HJR

# 26

(7)

# HOUSE COMMITTEE REPORT

Date referred: 4/3/87

FURTHER REFERRALS: Judiciary
Finance

DATE: 4-29-87

The State Affairs Committee has considered HJR 26

Proposing an amendment to the Constitution of the State of Alaska relating to advisory opinions of the Supreme Court on the request of the governor or legislature.

**RECOMMENDS:**

[ ] replace with ______________________

[ ] attached amendment(s)

[ ] the same title

[ ] a new title

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ______________ Committee

**ADOPTS:** [ ] ________ letter of intent

**ATTACHES NEW FISCAL NOTE(s):**

[X] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published ______________

[ ] same as previous zero fiscal note published ___________

**SIGNING DO PASS:**

[signature]

[signature]

Terry Martin

**SIGNING OTHER RECOMMENDATIONS:**

[signature] No Rec

[signature] No Rec

[signature]

Chairman's signature

# STATE OF ALASKA 1987 LEGISLATIVE SESSION
## FISCAL NOTE

**REQUEST:**

Bill Version: HJR 26
Publish Date:

Revision Date:
Title: Advisory opinions of the supreme court
Sponsor:
Requestor:

Agency Affected: Alaska Court System
BRU: Appellate Courts
Components:

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|---|---|---|---|---|---|---|
| Personal Services | .... | 40.3 | 40.3 | 40.3 | 40.3 | 40.3 |
| Travel | .... | .... | .... | .... | .... | .... |
| Contractual | .... | .... | .... | .... | .... | .... |
| Supplies | .... | 1.9 | 1.9 | 1.9 | 1.9 | 1.9 |
| Equipment | .... | 2.8 | .... | .... | .... | .... |
| Land & Structures | .... | .... | .... | .... | .... | .... |
| Grants & Claims | .... | .... | .... | .... | .... | .... |
| TOTAL OPERATING | 0.0 | 45.0 | 42.2 | 42.2 | 42.2 | 42.2 |
| CAPITAL | .... | .... | .... | .... | .... | .... |
| REVENUE | .... | .... | .... | .... | .... | .... |

**FUNDING:** (Thousands of Dollars)

| | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|---|---|---|---|---|---|---|
| General Funds | 0.0 | 45.0 | 42.2 | 42.2 | 42.2 | 42.2 |
| Federal Funds | .... | .... | .... | .... | .... | .... |
| Other | .... | .... | .... | .... | .... | .... |
| TOTAL | 0.0 | 45.0 | 42.2 | 42.2 | 42.2 | 42.2 |

**POSITIONS:**

| | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|---|---|---|---|---|---|---|
| Full-time | .... | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| Part-time | .... | .... | .... | .... | .... | .... |
| Temporary | .... | .... | .... | .... | .... | .... |

**ANALYSIS:** (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Karla Forsythe, General Counsel — Phone: 264-8228
Division: Alaska Court System — Date: 4-30-87

Approved by: Stephanie J. Cole, Deputy Director — Date: 4-30-87
Agency: Alaska Court System

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

# ALASKA COURT SYSTEM
## HJR 26 - Fiscal Analysis

Personal Services:

| | Salary | Benefits | Total |
|---|---|---|---|
| Law Clerk II, Range 15A, Anchorage, PFT - 12 months | $30,372 | $9,966 | $40,338 |
| Supplies | | | 1,875 |
| Equipment: (one-time cost) | | | |
| Desk, chair, typewriter, filing cabinet, statutes, and rules of court | | | 2,823 |
| Total First-Year Cost | | | $45,036 |

Fiscal Analysis - HJR 26

It is difficult to predict with complete accuracy the number of advisory opinion requests which could be anticipated if this measure becomes law. Given the substantial number of constitutional issues which have concerned the legislature and the governor's office in recent years, this note is calculated based upon an assumptions of 25 requests annually.

The primary impact on the supreme court would be in time spent researching, analyzing and drafting the opinions. The research and analysis function is performed by law clerks. Without a lower court ruling or appellate record for a law clerk to review, the appellate clerk indicates that at least two weeks will be expended preparing materials for the justices. As is the case in other appellate matters, law clerks will also proofread and check technical aspects of the opinion.

The appellate clerk estimates a total of 260 days of law clerk time spent on these requests. An additional law clerk III position would be required.

Although additional judicial and clerical support staff time will also be expended in these matters, it appears that existing resources are adequate to absorb the additional workload.

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD

P.O. BOX V, JUNEAU 99811
(907) 465-3892

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**CHAIRMAN**
LABOR AND COMMERCE COMMITTEE

**MEMBER**
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL AND SOCIAL SERVICES COMMITTEE
INTERNATIONAL TRADE SUB-COMMITTEE

April 14, 1987

TO: The Honorable Fran Ulmer, Chair
House State Affairs Committee

FROM: Representative Dave Donley DD

RE: HJR 26; Supreme Court Advisory Opinions

I am writing to request that the State Affairs Committee schedule a hearing on HJR 26 at your earliest convenience.

HJR 26 will authorize the Alaska Supreme Court to issue advisory opinions on questions of law submitted by the legislature or by the governor.

This measure could affect some of today's pressing issues such as bidder's preference, local hire and preference for local products. If we'd had more timely advice, these might already be in the works providing better economic stability for the state. In addition, HJR 26 will enable us to look at the innovative ideas we need right now, to provide jobs for Alaskans.

I have enclosed backup information which shows that legislation similar to this is currently in effect in nine other states.

If you have any questions or would like any additional information, please contact myself or my aide, Katy McHugh, at #3892.


INTERIM IN ANCHORAGE
1024 WEST SIXTH AVENUE • ANCHORAGE, ALASKA 99501 • (907) 561-8234

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
**RESEARCH AGENCY**

JAN 16 1987

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

January 16, 1987

MEMORANDUM

TO: Representative-Elect Dave Donley

FROM: Penelope Weyhrauch
Legislative Analyst

RE: **Advisory Opinions from the State Supreme Court**
Research Request 87.071

You asked for information on state legislatures which are allowed to ask for advisory opinions from their state supreme court. According to the National Center for State Courts, nine states allow their state legislatures to ask their state supreme courts for advisory opinions. Four of these states--Delaware, Maine, Massachusetts and Rhode Island--require their supreme court to respond to questions from the legislature. States which allow their supreme courts to respond to questions on a discretionary basis are: Alabama, Colorado, Louisiana, Michigan and New Hampshire.

I contacted Massachusetts, Colorado and New Hampshire to discuss the mechanism by which their legislatures request advisory opinions from their supreme courts. I did not contact the six other states listed above, because I believe that little new information would be gained by doing so.

The **Massachusetts** Supreme Judicial Court is required by its state constitution to give opinions at the request of the legislature or the governor. Jim Powers, with the Massachusetts Legislative Research Agency, said that this requirement is confined to "important questions of law and upon solemn occasions." The legislature usually asks the court constitutional questions of law, though other questions can also be asked. The court allows interested parties eight weeks to submit briefs on a question before it gives its opinion. Mr. Powers said that if the court does not wish to respond to a question, they may wait until the legislature acts on the issue and the question becomes moot. The court does not respond to political or frivolous questions.

The **Colorado** state constitution establishes that the state supreme court may respond to questions from the legislature, but according to Kim Morss, Legal Counsel and Legislative Liaison for the Colorado Judicial Council, it is not required to respond. According to Ms. Morss, the provision has rarely been used because the Colorado Judiciary and Legislature "don't like each other."

The New Hampshire supreme court may issue advisory opinions to the legislature, but it is not required to do so. The state constitution gives the supreme court discretionary authority to respond to questions. Tom Berry, staff member for the supreme court, said that the legislature frequently asks the supreme court for advisory opinions, usually relating to constitutional questions of law.

* * * *

I hope this information is helpful to you. I have attached copies of applicable sections of the state constitutions discussed in this memorandum. I have also attached court rules from Delaware and Michigan which establish advisory opinion authority for the supreme courts of those states. If you have any questions or would like additional information, please contact our agency.

PW

Attachments

November and elections, for the choice of councillors, senators and representatives shall be held biennially on the Tuesday next after the first Monday in November.

**Art. LXXXIII.** The general court shall have full power and authority to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices in periods of emergency resulting from disaster caused by enemy attack, and to adopt such other measures as may be necessary and proper for insuring continuity of the government of the commonwealth and the governments of its political subdivisions.

**Art. LXXXIV.** Article LXII of the Amendments to the Constitution is hereby amended by striking out section 1 and inserting in place thereof the following section:—*Section 1.* The commonwealth may give, loan or pledge its credit only by a vote, taken by the yeas and nays, of two-thirds of each house of the general court present and voting thereon. The credit of the commonwealth shall not in any manner be given or loaned to or in aid of any individual, or of any private association, or of any corporation which is privately owned and managed.

**Art. LXXXV.** Article II of Chapter III of the Constitution of the commonwealth is hereby annulled and the following is adopted in place thereof:—

*Article II.* Each branch of the legislature, as well as the governor or the council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.

**Art. LXXXVI.** Names of candidates of political parties for the offices of governor and lieutenant-governor shall be grouped on the official ballot for use at state elections according to the parties they represent, and the voter may cast a single vote for any such group, which shall count as a vote for each candidate in such group, but may not cast a vote for only one of the candidates in such group.

**Art. LXXXVII.** SECTION 1. For the purpose of transferring, abolishing, consolidating or coordinating the whole or any part of any agency, or the functions thereof, within the executive department of the government of the commonwealth, or for the purpose of authorizing any officer of any agency within the executive department of the government of the commonwealth to delegate any of his functions, the governor may prepare one or more reorganization plans,

the individual claimants; that the controversy did not involve the rights or franchises of the people; nor the rights of the state in its sovereign capacity; and so the writ was denied. People ex rel. Bentley v. McClees, 20 Colo. 403, 38 P. 468, 26 L.R.A. 646 (1894).

## III. OPINIONS.

### A. General Consideration.

**Cross reference.** As to provisions for certification of questions of law by the supreme court, see Rule 21.1, C.R.C.P.

**Law review.** For article, "Limitations Upon Legislative Inquiries Under Colorado Advisory Opinion Clause", see 4 Rocky Mt. L. Rev. 237 (1932).

**Original jurisdiction of supreme court enlarged.** The constitutional amendment requiring the supreme court to answer questions propounded by the governor or by either branch of the general assembly is an enlargement of the original jurisdiction previously conferred upon that court by the constitution. In re House Bill No. 122, 12 Colo. 466, 21 P. 478 (1889).

**Supreme court is not authorized to give advisory opinions other than pursuant to section.** No provision of the law authorizes the supreme court to give advisory opinions to state agencies other than to the general assembly or to the governor when requested upon solemn occasions pursuant to this section. Cameron v. Carroll & Co., 138 Colo. 432, 334 P.2d 748 (1959).

**Provision is only exception to rule that no court may construe legislation until it has been adopted.** The only exception to the rule that neither the supreme court, nor any other court, may be called upon to construe or pass upon a legislative act until it has been adopted is the constitutional provision authorizing the general assembly to propound interrogatories to the supreme court upon important questions upon solemn occasions. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

**But, no jurisdiction to pass on constitutionality of proposed law.** The courts do not have jurisdiction to pass upon the constitutionality of the substance of legislation prior to enactment or adoption. CF & I Steel Corp. v. Buchanan, 191 Colo. 570, 554 P.2d 1354 (1976).

Courts should not take jurisdiction to pass upon the constitutionality of a proposed law prior to its enactment or adoption. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

**Judicial response to ex parte inquiry from executive department is inconsistent with separation of governmental powers.** It must be admitted that the promulgation of a judicial opinion in response to an ex parte inquiry from the executive department of the government, concerning the affairs of the legislative department, is anomalous and peculiar, and, apparently at least, inconsistent with the prevalent American system of separating the governmental powers into distinct departments. But it must be borne in mind that the same instrument which divides the powers of the government into distinct departments has been so amended by the voice of the people as to require the supreme court to "give its opinion upon important questions, upon solemn occasions, when required by the governor, the senate or the house of representatives". In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707, 11 L.R.A. 241 (1890).

**Where there is no majority of supreme court as to either validity or invalidity of a statute which is the subject of interrogatories, no opinion respecting the interrogatories can be rendered under this section.** In re Interrogatories Propounded By McNichols, 142 Colo. 188, 350 P.2d 811 (1960).

**Answers by supreme court have effect of judicial precedents.** The answers by the supreme court to questions are reported as are other opinions, and have the force and effect of judicial precedents; differing in this respect from the few analogous provisions elsewhere adopted. In re House Bill No. 122, 12 Colo. 466, 21 P. 478 (1889).

**This section does not require wholesale exposition of all constitutional provisions relating to a given general subject.** In re Senate Resolution No. 2, 94 Colo. 101, 31 P.2d 325 (1933). See In re Senate Resolution, 9 Colo. 620, 21 P. 470 (1886).

**There is no constitutional requirement that reasons be given in answering questions upon the governor's request.** In re Senate Concurrent Resolution No. 10 of Forty-First Gen. Ass'y, 137 Colo. 491, 328 P.2d 103 (1958).

**Rule that every statute duly passed must be held constitutional unless contrary appears beyond reasonable doubt is not applicable to pending legislation when submitted to the supreme court for its opinion under this section.** In re Senate Resolution No. 2, 94 Colo. 101, 31 P.2d 325 (1933).

**Section as basis for jurisdiction.** Se In re Senate Rule, 9 Colo. 641, 21 P. 477 (1886); In re Election of Dist. Judges, 11 Colo. 373, 18 P. 282 (1888); In re Leasing of State Lands, 18 Colo. 359, 32 P. 986 (1893); In re Relief Bills, 21 Colo. 62, 39 P. 1089 (1895); In re Internal Imp. Fund, 24 Colo. 247, 48 P. 807 (1897); In re Interrogatories of Governor on Chapter 118, 97 Colo. 587, 52 P.2d 663 (1935); In re Interrogatories by Governor, 112 Colo. 294, 148 P.2d 809 (1944); In re House Resolution No. 2, 116 Colo. 18, 178 P.2d 415 (1947); In re Senate Bill No. 95 of Forty-Third Gen. Ass'y, 146

Colo. 233, 361 P.2d 350 (1961); In re Interrogatories from House of Representatives, 157 Colo. 76, 400 P.2d 931 (1965); In re Interrogatory of Governor, 162 Colo. 188, 425 P.2d 31 (1967); In re Interrogatories by Governor, 163 Colo. 113, 429 P.2d 304 (1967); In re Interrogatories Propounded by Senate, 168 Colo. 563, 452 P.2d 382 (1969); In re Interrogatories by Colo. State Senate, 168 Colo. 558, 452 P.2d 391 (1969).

Applied in S. H. Kress & Co. v. Johnson, 16 F. Supp. 5 (D. Colo.), aff'd mem., 299 U.S. 511, 57 S. Ct. 49, 81 L. Ed. 378 (1936).

B. Questions Submitted.

1. In General.

**Question must relate to purely public rights, be propounded upon solemn occasion, and possess a peculiar or inherent importance not belonging to all questions of the kind;** that executive questions must be exclusively publici juris, and legislative ones be connected with pending legislation, and relate either to the constitutionality thereof or to matters connected therewith of purely public right. In re Lieutenant Governorship, 54 Colo. 166, 129 P. 811 (1913).

This section has been construed by the supreme court as applying only to cases where questions publici juris are raised, thus excluding from this branch of its jurisdiction all controversies wherein private rights alone are involved. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889).

**Question submitted must be specific.** As a necessary condition precedent to the exercise of our extraordinary jurisdiction, under this section, the question submitted must be specific. In re House Bill No. 107, 21 Colo. 32, 39 P. 431 (1895). See In re House Bill No. 165, 15 Colo. 593, 26 P. 141 (1890); In re Loan of School Fund, 18 Colo. 195, 32 P. 273 (1893); In re University Fund, 18 Colo. 398, 33 P. 415 (1893).

**And particular section of constitution to be considered must be pointed out.** One prerequisite required in such matters is that it must appear that the bill which is the subject of inquiry will likely pass the branch of the general assembly submitting the question, and the particular section of the constitution to be considered in connection therewith must be pointed out. In re Senate Resolution No. 10, 33 Colo. 307, 79 P. 1009 (1905). See In re House Bill No. 165, 15 Colo. 593, 26 P. 141 (1890); In re Loan of School Fund, 18 Colo. 195, 32 P. 273 (1893); In re Lieutenant Governorship, 54 Colo. 166, 129 P. 811 (1913).

Thus, a resolution asking the supreme court for its opinion under this section, that points out numerous particulars in which the bill may conflict with provisions of the constitution, and involves a wholesale exposition of constitutional provisions relating to a general subject, will for that reason be refused consideration by the court. In re House Bill No. 99, 26 Colo. 140, 56 P. 181 (1899).

**Questions, when propounded by executive, must relate to matters exclusively juris publici.** In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889). See In re University Fund, 18 Colo. 398, 33 P. 415 (1893).

**And when propounded by branch of general assembly, must be connected with pending legislation** and relate either to the constitutionality thereof or to matters connected therewith of purely public right. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889). See In re University Fund, 18 Colo. 398, 33 P. 415 (1893); In re Interrogatories of House, 62 Colo. 188, 162 P. 1144 (1916).

The question whether a bill proposing to increase the fees of district attorneys throughout the state will apply to district attorneys now in office does not come within the rule announced. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889).

**Department propounding question in first instance determines whether occasion exists which justifies its submission.** In re Senate Resolution No. 10, 33 Colo. 307, 79 P. 1009 (1905). See In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889).

**But what are "important questions upon solemn occasions" must be ultimately determined by the supreme court itself.** In re Senate Resolution No. 2, 94 Colo. 101, 31 P.2d 325 (1933). See In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889); In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889); In re Penitentiary Comm'rs, 19 Colo. 409, 35 P. 915 (1894); In re Senate Bill No. 416, 45 Colo. 394, 101 P. 410 (1909); In re Lieutenant Governorship, 54 Colo. 166, 129 P. 811 (1913); In re Interrogatories of House, 62 Colo. 188, 162 P. 1144 (1916).

Questions propounded to the supreme court by the senate are limited to those specifically enumerated in this section of the constitution, and the court must determine whether or not questions so propounded are within the specifications. In re Interrogatories of Senate, 94 Colo. 215, 29 P.2d 705 (1934).

While the supreme court concedes to the governor full liberty to submit such questions as he may deem consistent with his executive powers, it reserves for itself the right to express its opinion freely, in whole or in part, or not at all, as it shall deem consistent with its judicial powers and constitutional obligation. In re Fire & Excise Comm'rs, 19 Colo. 482, 36 P. 234 (1894).

involved and complex legal problems and fundamental constitutional questions in proceedings under this section, although the state constitution seems to provide that it shall so do; however, the constitutional directive cannot be taken to mean that the supreme court should so act when possible prejudice may well result later to citizens whose rights are protected by both the state and federal constitutions. In re Interrogatories of Governor Concerning Senate Bill No. 34, 142 Colo. 188, 350 P.2d 811 (1960).

Were the supreme court, in an ex parte proceeding, to respond to interrogatories propounded by the general assembly with respect to the validity of a proposed statute, to the effect that such legislation is in all respects constitutional, such holding would be prejudicial to any citizen who at a future date might question its validity in the supreme court. In re Interrogatories Propounded by Senate, 131 Colo. 389, 281 P.2d 1013 (1955).

**This court should not give ex parte opinion in relation to controversy that has already arisen,** especially if actual litigation involving private rights is likely to arise from such controversy. In re Penitentiary Comm'rs, 19 Colo. 409, 35 P. 915 (1894).

**Ordinance proposed by people.** An ordinance proposed by the people under the laws of initiative and referendum is clothed with the presumption of validity and its constitutionality will not be considered by the courts by means of a hypothetical question, but only after enactment. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

The supreme court may not intrude upon the legislative powers of the people through an advisory opinion since the separation of governmental powers must be held inviolate. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

**Bill requiring corporations to pay their employees semimonthly** in lawful money of the United States, prohibiting contracts in violation thereof and providing penalties for its violation involves private rights and a question from the senate as to the constitutionality of such bill does not invoke the jurisdiction of the supreme court so as to require an opinion thereon under this section. In re Senate Bill No. 27, 28 Colo. 359, 65 P. 50 (1901).

A bill for an act to secure to laborers and others the payment of their wages in lawful money of the United States, and prescribing penalties for its violation, involves private rights of individuals and corporations, and is not a bill concerning matters publici juris such as will invoke the jurisdiction of the supreme court upon a question from the house of representatives as to its constitutionality under this section, authorizing the submission of questions to the court for its opinion. In re House Bill No. 99, 26 Colo. 140, 56 P. 181 (1899).

**Rank of appropriation for administrative body not yet appointed.** Under this section the court is not required to respond to a question as to the effect and rank of an appropriation for an administrative body not yet appointed. But to end doubt and controversy the court declared that an appropriation for the salary and expenses of the state tax commission was of the first class. In re Opinion of Justices, 55 Colo. 17, 123 P. 660 (1912).

**Right of police commissioner to retain office after removal.** The court will not, in a ex parte proceeding in response to an executive question, inquire into or determine the right of a police commissioner of Denver to retain his office after the governor has attempted to remove him. In re Fire & Excise Comm'rs, 19 Colo. 482, 36 P. 234 (1894).

**Section 4. Terms.** At least two terms of the supreme court shall be held each year, at the seat of government.

Adopted November 6, 1962 — Effective January 12, 1965. (See Laws 1963, p. 1049.)

**Cross reference.** As to terms of the supreme court, see also § 13-2-101 and § 13-2-102.

C.J.S. See 21 C.J.S., Courts, § § 148, 164, 165.

**Section 5. Personnel of court - departments - chief justice.** (1) The supreme court shall consist of not less than seven justices, who may sit en banc or in departments. In case said court shall sit in departments, each of said departments shall have full power and authority of said court in the determination of causes, the issuing of writs and the exercise of all powers authorized by this constitution, or provided by law, subject to the general control of the court sitting en banc, and such rules and regulations as the court may

Districts for registering
of the major part of the
divide the same into two
ll appear necessary; each
they enter upon the busi-
aithfully to discharge the
ith sufficient sureties, in
he punctual performance

The judicial power of
a trial court of general
ich lower courts as the
t 2.

n Commissions; Judges
val.] The tenure that
their offices shall be
ll judicial officers duly
eir offices during good
vision is made in this
uncil may remove any
address of both houses
se for removal shall be
ll not be a cause which
further that no officer
portunity to be heard
f the legislature.

Some printings of the
failed to substitute the
for "president" in sec
, but there is evidence
tion was intended by the
nvention of 1791-1792.
le. See 10 State Papers

of the New Hampshire
Independence of the
B.J. 28 (July 1959).



**[Art.] 74. [Judges to Give Opinions, When.]** Each branch of the [legisla]ture as well as the governor and council shall have authority to [requi]re the opinions of the justices of the supreme court upon important [quest]ions of law and upon solemn occasions.

HISTORY

[Ame]ndments—1958. Substituted "su[preme] court" for "superior court".

ANNOTATIONS


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**[1. Gen]erally**

[The] Supreme Court is limited by this [article] in giving advisory opinions and [in giv]ing them the justices act not as a [court] but as the constitutional advisors of [the b]ody requiring the opinion; the bodies [autho]rized to thus obtain opinions are [limite]d to the branches of the Legislature and the Governor and Council. Piper [v. To]wn of Meredith (1969) 109 NH 328, [... A]2d 828.

[A st]atute conferring jurisdiction on the [court] upon petition and hearing to render [a decl]aratory judgment as to a present [legal o]r equitable right or title in advance [of a] violation thereof is not in violation [of the] constitutional principle that courts, [except] in cases permitted under this [article,] shall not give advisory opinions [withou]t notice and hearing. Faulkner v. [...] (1931) 85 NH 147, 155 A 195.

[The] justices cannot avoid the duty [impose]d upon them by this article to [answer] important questions of law by [... p]resuming that a statute providing [for pe]rsonal expenses of legislators is [consti]tutional and refusing to examine [its va]lidity or technical grounds. Opinion [of the] Justices (1949) 95 NH 533, 64 A2d [...].

[Where] a majority of the justices rendered [an opin]ion on an inquiry propounded to [them by the] governor and council concern[ing the] validity of a statute imposing [... taxes] upon property owned by the [state, a m]inority opinion was rendered expressing the belief that this was not a proper subject upon which the justices could render an opinion because it amounted to a quasi-judicial determination of existing rights in a nonjusticiable matter. Opinion of the Justices (1944) 93 NH 478, 39 A2d 765.

Where in addition to special questions as to the constitutionality of proposed legislation the opinion of the court is requested as to whether such legislation violates the Constitution "in any respect" the court will not, where the bill presents no constitutional defects upon its face, speculate upon whether other constitutional issues might be raised. Opinion of the Justices (1957) 101 NH 518, 131 A2d 818.

This article does not authorize advisory opinions on questions which the body asking the advice has determined not to consider. Re School-Law Manual (1885) 63 NH 574, 4 A 878.

**2. Who may obtain opinion—Generally**

The power of the Supreme Court to advise parties as to their rights and duties is limited by the common law to questions arising in the administration of property held in a fiduciary capacity, and by the Constitution to opinions given upon request of the legislature and the governor and council. Harvey v. Harvey (1904) 73 NH 106, 59 A 621.

Justices of Supreme Court have authority to give advisory opinions only when requested to do so by either branch of

commissioner and excise commissioner of the city of Denver at the present time required departure from the rule and an opinion upon the facts as submitted, without prejudice to the right to show other or different facts. In re Fire & Excise Comm'rs, 19 Colo. 482, 36 P. 234 (1894).

3. Improper Questions.

**Constitutionality of proposed legislation.** Questions propounded by the governor as to the constitutionality of a proposed legislative act not introduced and which may never be passed, are premature. In re Interrogatories by Governor, 71 Colo. 331, 206 P. 383 (1922). See In re Proposed Amendments to Constitution & Initiative & Referendum Measures, 50 Colo. 71, 114 P. 298 (1911).

Under the provisions of this section, questions of the executive concerning the constitutionality of proposed legislation are only to be answered when doubt as to the constitutionality is expressed. In re Interrogatories by Governor, 71 Colo. 331, 206 P. 383 (1922).

**Constitutionality of legislation no longer pending.** When both houses of the general assembly have taken a final vote on a bill, it is no longer pending legislation, and the court will decline to respond to a question as to its constitutionality; nor will the court consider such a question when presented at so short a time before the termination of the legislative session as to afford no opportunity for such investigation as the question requires. In re Senate Bill No 416, 45 Colo. 394, 101 P. 410 (1909).

This section does not authorize the supreme court to answer questions propounded by the house of representatives concerning the constitutionality of a measure passed by that body and which is no longer before it for consideration. In re House Resolution No. 12, 88 Colo. 87, 298 P. 960 (1931).

The supreme court is not at liberty in response to legislative inquiry to pass upon the constitutionality of statutes. In re University Fund, 18 Colo. 398, 33 P. 415 (1893).

**Questions of executive regarding legislation no longer pending.** The jurisdiction conferred by the constitution upon this court to answer executive and legislative questions, is extraordinary; the construction of statutes is within the ordinary jurisdiction of the courts. One of the most common subjects of judicial consideration is the construction of legislative acts as they arise in due course of litigation. If we were to extend the extraordinary ex parte jurisdiction of this court to executive questions involving the construction of legislative acts, it would be a most serious innovation. The tendency would be to transfer in a great measure the management of our state institutions from the executive to the judicial department of the government. In re Penitentiary Comm'rs, 19 Colo. 409, 35 P. 915 (1894).

**Questions referring to statutes of long standing,** and requiring the determination of the right and duty of certain officials, are not to be determined ex parte. In re Interrogatories of House, 62 Colo. 188, 162 P. 1144 (1916).

The duty of the court in responding to legislative questions is limited to those which relate to proposed legislation. Completed legislation is not a subject of legislative inquiry. It is not within the province of the court to advise the general assembly as to whether existing legislation upon any subject satisfies the requirements of the constitution. All departments of government are of equal dignity. Neither can declare that another has not performed a duty imposed by the constitution. In re Senate Resolution No. 4, 54 Colo. 262, 130 P. 333 (1913).

**Questions relating to desirability or policy of proposed legislation cannot be propounded.** In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889).

**Complex question of constitutional and statutory construction.** In order to answer questions propounded by the governor the court would be obliged to construe at least three sections of the constitution and at least four sections of statutes. It appeared that there was a conflict between the specified constitutional provisions themselves as well as between the constitutional and statutory provisions, and a possible conflict between the statutory provisions, presenting a most difficult problem of constitutional and statutory construction requiring exhaustive research and most careful consideration. The questions propounded by the governor might all be the subject of litigation in which the parties to be affected will be afforded ample opportunity of presenting their causes, and then, and not until then, would it be the court's duty, on requested review, to give these important constitutional and statutory questions its exhaustive research and study. In re Interrogatories by the Governor, 126 Colo. 48, 245 P.2d 1173 (1952).

The supreme court should not prejudge involved legal problems and fundamental constitutional interpretations in ex parte proceedings, it being the policy of the supreme court to accommodate the general assembly only in such cases as are clear and where no prejudice will result to anyone in the future. In re Interrogatories Propounded by Senate, 131 Colo. 389, 281 P.2d 1013 (1955).

As a general proposition the supreme court seriously doubts the wisdom of prejudging

the Legislature or the Governor and Council. Opinion of the Justices (1969) 109 NH 366, 252 A2d 429.

3. —Private individuals

Advisory opinions of the Supreme Court cannot be given on the petition of private individuals. State v. Harvey (1965) 106 NH 446, 213 A2d 428.

It has been denied consistently that there is any right in courts to give advisory opinions to private litigants. Piper v. Town of Meredith (1969) 109 NH 328, 251 A2d 328.

4. —Legislature

This article authorizes the legislature, as well as the governor and council, to require the advice of the justices upon important legal questions pending in the body entitled to the advice, and awaiting the consideration and action of that body in the course of its legislative or executive duty. Opinion of the Justices (1906) 73 NH 625, 63 A 505, 6 Ann. Cas. 689.

Under this article either the House or the Senate has independent authority to request advisory opinions, and the duty of the justices to return their answers does not depend upon consent or approval of the other branch, whose request that no answer be returned may be disregarded. Opinion of the Justices (1959) 102 NH 80, 150 A2d 813.

A question of law necessary to be determined by one branch of the legislature in the performance of its duties furnishes the basis for a proper request to the court for its opinion. Opinion of the Court (1881) 60 NH 585.

The reasons of one branch of the legislature for refusing to concur in the request of the other for the opinion of the justices are not subject to judicial scrutiny. Opinion of the Justices (1959) 102 NH 80, 150 A2d 813.

The fact that no suit can be maintained against the state affords the legislature a proper occasion for requiring the advice of the justices as to the validity of a contract entered into on behalf of the state by the governor, with the advice and consent of the council. Opinion of the Justices (1903) 72 NH 601, 54 A 950.

The justices will give an opinion on an inquiry propounded to them by the legislature concerning the power of the legislature to convene itself without approval of the governor and council, even though the legislative session has ended, since such an opinion might be of benefit to future legislatures. Opinion of the Justices (1944) 93 NH 474, 37 A2d 478.

Questions propounded to the justices by the house of representatives which do not directly involve the powers and duties of that body do not require an answer by the justices. Opinion of the Justices (1949) 95 NH 557, 66 A2d 76; Opinion of the Justices (1892) 67 NH 600, 43 A 1074.

5. —Governor and council

An advisory opinion may be sought where the powers of the governor and council are in question. Opinion of the Justices (1959) 102 NH 183, 152 A2d 870.

A request for an opinion by the governor and council is proper where the question propounded relates to action awaiting the consideration of the governor and council in the course of their executive duties. Opinion of the Justices (1950) 96 NH 517, 83 A2d 738; Opinion of the Justices (1908) 74 NH 606, 68 A 873.

Questions concerning the executive duties of the governor and council are proper subjects upon which to base a request for an opinion of the justices since such opinion would assist the governor and council in the performance of the duties legally imposed upon them by statute. Opinion of the Justices (1949) 96 NH 513, 68 A2d 859.

The governor and council may properly request the opinion of the justices on the validity of a statute which provides for re-organization plan of the state government where it is necessary that the validity of the statute be determined so that the governor will know whether or not to call the legislature into special session and submit to them such a plan. Opinion of the Justices (1950) 96 NH 517, 83 A2d 738.

Under a statute which imposes upon the governor the duty to provide by contract for railroad transportation of certain public officers, if the governor is in doubt as to what public officers are included in the meaning of the statute he, with advice and consent of the council, may require the opinion of the justices on the question. Opinion of the Justices (1908) 74 NH 606, 68 A 873.

While it is the duty of the justices, when requested by the governor and council, to give their opinions upon important questions of law and upon solemn occasions, it first must appear to the justices that their answer to any question so presented will be of assistance to the

tant question of law necessary to be determined by the body making the inquiry. Opinion of the Justices (1892) 67 NH 600, 43 A 1074.

12. —Private rights

This article does not authorize the legislature or the governor and council to require advice from the justices on a question affecting private rights alone on which interested persons are entitled to be heard, and justices will refuse to give advice when such questions are propounded. Opinion of the Justices (1949) 95 NH 557, 66 A2d 76; Opinion of the Justices (1883) 62 NH 704.

The justices will decline, as far as possible in the performance of their advisory duties imposed by this article, to express their views upon questions involving private rights, or to make any answer unless the official power or official duty of the body making the inquiry is clearly involved by the question submitted. Opinion of the Justices (1911) 76 NH 597, 79 A 490.

13. —Questions of law or fact

Opinions of the justices are to be given on questions of law only and not upon questions of fact in any form, and the court in such opinions will not weigh the evidence with any view of settling disputed questions the decision of which depends upon evidence alone. Opinion of the Justices (1864) 45 NH 607.

Generally, this section does not permit the supreme court to advise the legislature as to the meaning and scope of existing statutes. Opinion of the Justices (1959) 102 NH 187, 152 A2d 872.

This provision does not apply to constitutional questions involving existing laws. Opinion of the Justices (1955) 99 NH 524, 113 A2d 542.

14. —Unnecessary answers

The court will not undertake to answer the second of two questions submitted as to the constitutionality of proposed legislation, where the answer to the first will serve the present legislative purpose, and adjournment of the legislature is impending. Opinion of the Justices (1959) 102 NH 240, 154 A2d 184.

15. Effect of opinions

In giving an opinion on a question propounded to them by the legislature the justices do not act as a court, but as the constitutional advisors of either branch of the legislature requiring their opinion, and it is not essential that the question proposed should be such as might come before them in their judicial capacity. Opinion of the Court (1881) 60 NH 585; Opinion of the Justices (1906) 73 NH 625, 63 A 505, 6 Ann. Cas. 689; Opinion of the Justices (1911) 76 NH 597, 79 A 490.

An opinion of the justices on proposed legislation is not binding upon the court in case the proposed legislation should become law and a case should arise requiring its construction. Opinion of the Justices (1852) 25 NH 537.

An opinion of the justices does not amount to a judicial decision. Re School-Law Manual (1885) 63 NH 574, 4 A 878; Opinion of the Justices (1911) 76 NH 597, 79 A 490.

16. Dissent

Where the opinion of one or more justices is opposed to the opinion expressed by the majority of the justices on a question submitted to them it is the duty of the minority to express their opinion in the same manner as that of the majority. Opinion of the Justices (1915) 77 NH 611, 93 A 311.

17. Cited

Cited in Wyman v. De Gregory (1957) 101 NH 171, 137 A2d 512; Opinion of the Justices (1958) 101 NH 549, 137 A2d 726.

[Art.] 75. [Justices of Peace Commissioned for Five Years.] In order that the people may not suffer from the long continuance in place of any justice of the peace who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of justice of the peace shall become void at the expiration of five years from their respective dates, and upon the expiration of any commission, the same may if necessary be renewed or another person appointed as shall most conduce to the well being of the state.

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# DELAWARE CODE ANNOTATED

## REVISED 1974

### With Provision for Subsequent Pocket Parts

Prepared under the Supervision of

The Delaware Code Revisors

JOSEPH WHITMORE MAYBEE AND DANIEL F. WOLCOTT, JR.

by

The Editorial Staff of the Publishers

*Under the Direction of*

D. P. HARRIMAN, A. D. KOWALSKY
AND A. E. ESTES

## VOLUME 16

### 1981 Replacement Volume

*Including Legislation Enacted Through December 31, 1981 by the 131st General Assembly and annotations taken from Atlantic Reporter 2d through Volume 432 (p. 327)*

THE MICHIE COMPANY

*Law Publishers*

CHARLOTTESVILLE, VIRGINIA

1981

KFD DELAWARE CODE ANNOTATED---

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Annotated through 478 A.2d 226. For complete scope of annotations, see preface in supplement to Volume 1.

THE MICHIE COMPANY
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CHARLOTTESVILLE, VIRGINIA
1984

## RULE 44.

## ADVISORY OPINIONS UPON REQUEST FROM THE GOVERNOR OR FROM THE GENERAL ASSEMBLY

(a) **Request for an Opinion.** A request from the Governor or from the General Assembly shall be regarded as confidential for a period of 5 days after receipt thereof, or until the request becomes public information, whichever first occurs.

(b) **Briefing and Oral Argument.** The request shall be docketed with the Clerk of the Court and, after designation of counsel, shall be processed through briefing and argument in the same manner as an appeal or as an original proceeding in the Supreme Court. Correspondence between the Governor, or the Speaker of the House and the President Pro Tempore of the Senate, as the case may be, and the Justices about the request shall be included in the docket which is public information.

(c) **Delivery and Publication.** After the opinions are prepared, they shall be hand-delivered to the Governor or to the Speaker of the House and the President Pro Tempore of the Senate, as the case may be, and shall be regarded as confidential for a period of 5 days thereafter, or until the Governor or the Speaker of the House and the President Pro Tempore of the Senate, as the case may be, has released them, whichever first occurs.

(Amended, effective Dec. 15, 1983.)

**Commentary.** The rule amendment implements recent legislation amending § 141 of title 10 to permit the General Assembly as well as the Governor to request advisory opinions of the Supreme Court.

**Effect of amendment.** — The 1983 amendment, effective Dec. 15, 1983, added "or from the General Assembly" in the title of the rule, inserted "or from the General Assembly" in paragraph (a), substituted "5" for "10" in that paragraph, inserted "or the Speaker of the House and the President Pro Tempore of the Senate, as the case may be" in the second sentence of paragraph (b), and in paragraph (c), deleted "the office of" following "hand-delivered to," inserted "or to the Speaker of the House and the President Pro Tempore of the senate, as the case may be" and substituted "5" for "10" and "or the Speaker of the House and the President Pro Tempore of the Senate, as the case may be, has released" for "releases."

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# PART V. ATTORNEYS

## *Subpart A — Board of Bar Examiners*

## RULE 52.

## ADMISSION TO THE BAR — GENERAL

(a) **Requirements for Admission.** Except as to persons admitted under Rule 53, no person shall be admitted to the Bar unless he shall have qualified by producing evidence satisfactory to the Board:

(5) That he has been regularly graduated with a baccalaureate degree or its equivalent from a law school which at the time of conferring such





degree was listed on the A
schools.

(6) That he has been exa
of law, equity, legal ethics a
Responsibility and has beer
as an attorney. The Board's
its discretion and shall be
scoring standard to be pro

(7) That he is a domicilia
if he passes the examina
admission, either his domic

(8) That he has served
service for at least 5 mon

(i) In the office of or
Preceptor, or under th
member of the Bar or
and has been in prac

(ii) As a law clerk
State or of a United

(iii) In the office of
the United States At
Legal Aid Society, In
tion approved by the
of a member of the
certified by the Boar

(9) That he has sati
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Court or the Board shal
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$75 to the Clerk of the

(c) **Clerkship.** No person
served a satisfactory clerksh
of this rule. The 5-month pe
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shall have matriculated at a
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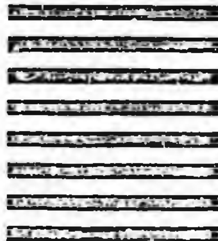
desiring to qualify for admi
practical experience to be ac
Prior to the admission of
applicant and his Preceptor
completed the required list

(d) **Certification.** Upon
admission to the Bar, the B
of his qualification for adm

An applicant for admissi
for admission, including es
domicile or his principal of




# MICHIGAN RULES OF COURT 1986

## STATE

With Amendments

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1986

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(5) 50¢ per page for a copy of an opinion; however, one copy must be given without charge to each party in a case.

A person who is unable to pay a filing fee may ask the court to waive the fee by filing a motion and an affidavit disclosing the reason for the inability.

(H) **Rule Applicable.** Except as provided in this rule, MCR 2.625 applies generally to taxation of costs in the Court of Appeals.

(I) **Violation of Rules.** The Court of Appeals may impose costs on a party or an attorney when in its discretion they should be assessed for violation of these rules.

[Amended January 31, 1985.]

### Note

MCR 7.219 is based on GCR 1963, 822.

Subrules (F) and (G) carry forward the provisions of GCR 1963, 822.2 and 822.3 regarding the fees and expenses that may be collected and taxed. The fee for a copy of a Court of Appeals opinion is changed to 50¢ per page, to conform with MCL 600.321(4); MSA 27A.321(4).

New subrules (A)-(E) provide the procedure for taxation of costs, formerly covered by reference to the rule governing taxation of costs in trial courts. See GCR 1963, 822.1.

Subrule (I) adds explicit authorization for the Court of Appeals to impose costs on a party or attorney for violation of the rules.

## SUBCHAPTER 7.300 SUPREME COURT

### RULE 7.301 JURISDICTION

The Supreme Court may:

(1) review a Judicial Tenure Commission order recommending discipline, removal, retirement, or suspension (see MCR 9.223–9.226);

(2) review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals (see MCR 7.302);

(3) review by appeal a final order of the Attorney Discipline Board (see MCR 9.122);

(4) give an advisory opinion (see Const 1963, art 3, § 8);

(5) respond to a certified question (see MCR 7.305);

(6) exercise superintending control over a lower court or tribunal (see, *e.g.*, MCR 7.304);

(7) exercise other jurisdiction as provided by the constitution or by law.



Colorado Art 6 - §3
Mass - Chap 3 part 2 Art 2
New Hamp - Part 2 Art 74

# Alaska State Legislature
# House of Representatives

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(907) 783-2905

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REPRESENTATIVE
JIM ZAWACKI
DISTRICT 7

MEMBER
COMMUNITY & REGIONAL AFFAIRS COMMITTEE
LEGISLATIVE BUDGET & AUDIT COMMITTEE
FINANCE SUBCOMMITTEE

April 29, 1987

Rep. Fran Ulmer, Chair
State Affairs Committee

Dear Fran,

You will note that there is a fairly substantial list of co-sponsors on House Concurrent Resolution 15, which is before you. That represents a confidence on the part of those members that the voters were serious when they passed the constitutional amendment to which it refers.

I happen to disagree with the Attorney General's opinion which holds the capital projects provision of that amendment invalid at present budget levels. It still remains that the people of Alaska did say by their vote, in very substantial numbers, that they see a need for responsible capital projects.

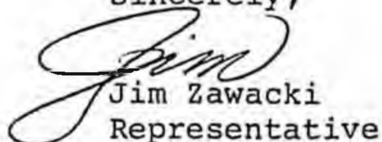
Those capital projects will help stabilize the economy of many communities right now when it is needed the most. This resolution would only express the interest of the Legislature in doing whatever little we can to help bolster the economy through some capital expenditure on capital projects.

The construction industry, the labor and crafts unions, and the general public in many communities would benefit. Passage of this resolution would, of course, have no legal effect, but it could create an awareness which might help to pass some of the capital bills which are before us.

It would also demonstrate to the people who passed the constitutional amendment -- and who elected us -- that we are paying attention to their wishes.

I hope you can see fit to support the Resolution. It is, at the very least, an expression of confidence in the past, present and future of Alaskans.

Sincerely,



Jim Zawacki
Representative

JZ:p-m