

ELECTION OF MAINE'S ATTORNEY GENERAL

The State of Maine elects its Attorney General along with two other constitutional officers -- the Secretary of State and the State Treasurer -- and one statutory officer -- the State Auditor-- in a manner unique in the nation: election by secret ballot at a joint session of the Legislature. The overwhelming majority of states choose their chief legal officers through a direct statewide election; in a few states, the Governor appoints the Attorney General; in Tennessee, the State Supreme Court appoints the Attorney General.

The problem of how to choose the Attorney General is a difficult one. The principal functions of the office are to provide advice to the executive branch, to represent the executive branch in court, and to prosecute crimes that may be committed by executive officials. When all voters elect the Attorney General, a candidate has to mount a statewide campaign, which means raising a substantial amount of money and assembling a campaign staff. As a result, a successful candidate enters office with campaign contributors who may seek influence over the exercise of the office's powers, and campaign workers who may seek positions in the office, requiring the discharge of existing staff. The objectivity of the Attorney General's advice, positions in court and prosecutorial decisions may be severely compromised by such campaign activities. When the Attorney General is appointed, these problems are even greater, since s/he has no independence from the executive branch, and can be discharged if s/he takes positions that incur the displeasure of the chief executive. The most notorious example of this was the firing of Special Prosecutor Archibald Cox by President Nixon, when Mr. Cox's investigation of crimes in the executive branch got too close to the White House.

The Maine system avoids both these dangers. In order to be elected in Maine, a candidate must secure the support of a majority of the members of his or her party who are elected to the Senate and the House of Representatives every two years, so that he or she will be that party's nominee at the joint convention held in early December, and will become the Attorney General if his or her party is in the majority. There is thus no need for a statewide campaign, and the Attorney General's continuance in office does not depend on the pleasure of the chief executive.

The consequences of this system for the conduct of the affairs of the office are profound, because when a new Attorney General takes office s/he is not beholden to campaign contributors, nor is there any pressure on him or her to discharge existing staff to make way for campaign workers. All that changes is the person of the Attorney General. As a result,

there have never been any political firings in the Maine Office of the Attorney General, and the office is run by professional lawyers who invariably survive from one administration to the next. This means that the office's functions described above are discharged in as professional manner as possible.

The problem with the Maine system is the lack of public awareness of the process of choice of the Attorney General. There are 186 total seats in the Legislature (35 in the Senate and 151 in the House), and the party with the majority of those seats must necessarily have at least 94, and probably more. This means that to be the chosen candidate from the majority party, one must secure the support of 50 to 55 current or prospective legislators. The process of doing so is intensely personal, for each candidate must contact each member of his or her party individually to learn the conditions of that person's vote. For example, it was widely known some years ago that, in order to have a chance for the support of a certain legislator from a remote part of the state, a candidate for Attorney General was obliged to drive out to the legislator's house and talk to him in his kitchen.

Usually the campaign for the next Attorney General begins once the current Attorney General is chosen, particularly if it is known that the seat will be vacant in two years either because the incumbent is known to be running for other office or because the incumbent is barred from seeking a fifth term because of term limits. The candidates are self-proclaimed and almost invariably consist of current or recent members of the Legislature, usually the House, where most of the votes reside. Although there is no constitutional requirement that the Attorney General be a lawyer, s/he always has been, and there are very few lawyers in the Legislature. Thus, the field of prospective candidates is extremely small, consisting of lawyer members of the majority party.

There is no public aspect to the process. None of the candidates is required to disclose publicly what his or her policies would be with regard to the discharge of the powers of the Attorney General. It is difficult to see what would lead any of the candidates to expose the process to more public scrutiny. The position of the Attorney General is one of the most important in state government, and the state would benefit if more were known about the persons who seek it before they take office and if the process were more open to the public.

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