

STATE OF MAINE

In House _____

WHEREAS, it appears to the House of Representatives of the 125th Legislature that the following are important questions of law and that this is a solemn occasion; and

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

WHEREAS, there is concern within the House of Representatives that the Treasurer of State has violated the provisions of the Constitution of Maine, Article V, Part Third, Section 3, which states that: "The Treasurer shall not, during the treasurer's continuance in office, engage in any business of trade or commerce, or as a broker, nor as an agent or factor for any merchant or trader."; and

WHEREAS, in response to questions posed to the Attorney General by a member of the House of Representatives dated February 10, 2012, the Attorney General has provided the following information. Most of this information regarding the Treasurer of State's activities contained in the Attorney General's opinion is also identified in an amended Statement of Sources of Income filed by the Treasurer of State with the Commission on Governmental Ethics and Election Practices in response to a complaint filed by the Maine Democratic Party alleging that the Treasurer of State failed to disclose adequately sources of income and activities on his 2010 Statement of Sources of Income.

1. During his term in office the Treasurer of State has owned the Popham Beach Club in Phippsburg, Maine. Research not mentioned by the Attorney General's opinion shows that the website for the club indicates that it is a private recreational club with family memberships that is available for rental for private events beginning in May 2012. The club is not organized as a separate entity and does not file a separate tax return. All revenues and expenses of the club are attributed to the Treasurer of State personally. While a manager is employed with responsibility for day-to-day operations of the club, the manager is not involved with club finances. The Treasurer of State is the sole signatory for the club's checking account. All utility bills are in the Treasurer of State's name. While serving as Treasurer of State, the Treasurer of State has represented the club before the Town of Phippsburg with regard to a local land use permit application.

2. During his term in office the Treasurer of State has also been involved with real estate development activities through a domestic limited liability company known as Dirigo Holdings, LLC. Records on file with the Secretary of State indicate that the Treasurer of State is the clerk/registered agent for the company. Management of the company is vested in its members. The Treasurer of State is the sole member of the company. The primary business of Dirigo Holdings, LLC is the development of real estate in the Town of Phippsburg known as Popham Woods Condominiums. A site location of development order issued by the Department of Environmental Protection in 2007 to Dirigo Holdings, LLC states that the company planned to develop a 69-unit condominium development with an estimated cost of \$17,279,000 and that the company intended to self-finance the proposed project. Properties are currently being marketed by a realty company.

3. The Constitution of Maine, Article V, Part Third, Section 2 requires the Treasurer of State to give bond to the State. The Maine Revised Statutes, Title 5, section 122 provides that a condition of the bond must be that the Treasurer of State will not engage in trade or commerce or act as a broker, agent or factor for any merchant or trader. The bond provided by the Treasurer of State under Title 5, section 122 does not address engagement in trade or commerce.

4. The Attorney General's opinion concludes that the intent of the constitutional restriction in the Constitution of Maine, Article V, Part Third, Section 3 is to require the Treasurer of State to make a full-time commitment to the office of Treasurer of State and that the Treasurer of State is precluded from engaging in trade or business that would divert his attention and cannot accept employment or provide services to others while in office.

5. The Attorney General concludes that, with respect to the Treasurer of State, any activities related to active management of stock or other ownership interests should be handled by 3rd parties and the Treasurer of State should dissociate himself from active management of any entities and should not appear before any governmental bodies on behalf of any entities that he owns; and

WHEREAS, the Attorney General was unable to locate any judicial decision construing the constitutional restrictions on the Treasurer of State's activities; and

WHEREAS, the Treasurer of State does not appear to have responded to the recommendations of the Attorney General; and

WHEREAS, the Treasurer of State has also indicated to the Commission on Governmental Ethics and Election Practices that he holds passive ownership interests in other investment companies and that his original required filing with the commission did not completely identify all of his activities and sources of income; and

WHEREAS, if the activities of the Treasurer of State violate the provisions of the Constitution of Maine, Article V, Part Third, Section 3, the validity of previous and future action by the Treasurer of State under the Constitution and statutes of the State of Maine is placed in question; and

WHEREAS, if the activities of the Treasurer of State violate the provisions of the Constitution of Maine, Article V, Part Third, Section 3, the only remedies available to the House of Representatives would be removal from office by impeachment or address under Article IX, Section 5; and

WHEREAS, under the Constitution of Maine, Article IV, Part First, Section 8, the House of Representatives has the sole power of impeachment; and

WHEREAS, the initiation of impeachment or address proceedings is one of the most serious actions that the Legislature can contemplate and should not be undertaken without a clear understanding of the governing provisions of the Constitution of Maine; and

WHEREAS, a decision by the House of Representatives on whether to initiate proceedings to remove the Treasurer of State from office involves important questions of law on a solemn occasion; now, therefore, be it

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

Question 1. Do any of the activities of the Treasurer of State identified by the Attorney General violate the constitutional restrictions prohibiting the Treasurer of State from engaging in a business of trade or commerce or as a broker or agent or factor for any merchant or trader? Has the Treasurer of State violated his oath "...to support the Constitution of the State of Maine"?

Question 2. If the answer to either part of Question 1 is in the affirmative, does this violation place in jeopardy the validity of any actions taken by the Treasurer of State while in violation of the constitutional restrictions?

Question 3. If the answer to either part of Question 1 is in the affirmative, having violated the Constitution of Maine, is it possible for the Treasurer of State to remain in office?

Question 4. Given that the Treasurer of State is prohibited from engaging in trade or commerce, could he comply with the Constitution of Maine by placing management of his business interests in the hands of a 3rd party or would it be necessary for him to divest himself of his interests entirely?

Question 5. Do the activities of the Treasurer of State identified by the Attorney General with regard to the Treasurer of State's involvement with the Popham Beach Club or Dirigo Holdings, LLC or the Treasurer of State's failure to provide complete information regarding sources of income and activities to the Commission on Governmental Ethics and Election Practices constitute a misdemeanor in office permitting the House of Representatives to take action against the Treasurer of State under the Constitution of Maine, Article IX, Section 5 providing for the impeachment or removal by address to the Governor?

Question 6. Are there any other avenues available to the Legislature to investigate the activities of the Treasurer of State and to determine whether the Treasurer of State's actions violate the Constitution of Maine or any provisions of law?

Question 7. Does the incompleteness of the Treasurer of State's bond constitute grounds for removal under the Maine Revised Statutes, Title 5, section 124? What action would be necessary under that law to remove the Treasurer of State?

SPONSORED BY: _____

(Representative DION)

TOWN: Portland