

SUPREME COURT OF RHODE ISLAND

In re Advisory Opinion to the Senate

911 A.2d 276 (R.I. 2006) · Decided November 22, 2006

SUMMARY

The Rhode Island Supreme Court declines to entertain a request from the Senate for an advisory opinion concerning gubernatorial appointments to the Beacon Mutual Insurance Company board. The Court explains that the legislative composition would change after the intervening general election and that the Rhode Island Constitution does not require an advisory opinion to a succeeding legislative body.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Frank J. Williams, Chief Justice; Maureen McKenna Goldberg, Justice; Francis X. Flaherty, Justice; Paul A. Suttell, Justice; William P. Robinson III, Justice
JURISDICTION	Rhode Island
DECIDED	November 22, 2006
DISPOSITION	other
PROCEDURAL POSTURE	The Rhode Island Senate requested an advisory opinion under article 10, section 3, of the Rhode Island Constitution concerning whether article 9, section 5, required the Governor's future appointments to the Beacon Mutual Insurance Company board to be made with the Senate's advice and consent.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court per curiam order; precedential as to the Court's advisory-opinion jurisdiction and the effect of an intervening change in legislative composition.

TOPICS

- constitutional law
- appellate procedure
- election law

PRACTICE AREAS

- constitutional law
- advisory opinions
- appellate procedure
- election law

QUESTIONS PRESENTED

1. Whether the Court should issue an advisory opinion requested by a Senate whose composition would change before the Court could respond.
2. Whether article 10, section 3, of the Rhode Island Constitution obligated the justices to answer the advisory-opinion request after the intervening general election.

HOLDINGS

1. The Court will not entertain an advisory-opinion request from a legislative body when an intervening general election changes the body's composition before the Court can respond, because the constitutional obligation to issue an advisory opinion is limited to questions pending and awaiting action in the body that made the request.

KEY QUOTATIONS

“Our jurisprudence clearly indicates that the justices of this Court refrain from answering requests for advisory opinions from either House of the General Assembly when the composition of the legislative body that propounded the question inevitably will change as a result of an intervening general election.” (911 A.2d at 276-77)

“Because the Rhode Island Constitution does not obligate the justices of this Court to issue advisory opinions to succeeding legislative bodies, we are unable to entertain the request set forth in the aforementioned Senate resolution.” (911 A.2d at 277)

“For the reasons stated, we respectfully decline to entertain this request for an advisory opinion from the Honorable Senate set forth in Senate Resolution 2006-S 3198.” (911 A.2d at 277)

FACTUAL BACKGROUND

The Rhode Island Senate requested an advisory opinion regarding the Governor's next appointments to the board of directors of Beacon Mutual Insurance Company. The Senate recessed, and an intervening general election on November 7, 2006, ensured that the Senate's composition would change before the Court could reasonably respond. The Court had not ordered briefing or set oral argument when it determined that the request could not be answered before the newly composed Senate convened.

PROCEDURAL HISTORY

The Senate adopted Senate Resolution 2006-S 3198 on June 22, 2006, and then recessed the General Assembly. Before the Court requested briefing or set oral argument, the November 7, 2006 general election changed the composition of the Senate. The Court declined to entertain the request because any response would be addressed to a successor legislative body rather than the body that had made the request.

DISPOSITION

other

CASES CITED

- Advisory Opinion to the House of Representatives of the State of Rhode Island and Providence Plantations, 108 R.I. 151, 153, 272 A.2d 925, 926 (1971)
- Opinion to House of Representatives, 99 R.I. 151, 152-53, 206 A.2d 221, 222 (1965)
- In re Advisory Opinion to the Governor (Casino III), 904 A.2d 67, 68 (R.I. 2006)

OPINION

PER CURIAM.

ORDER To the Honorable, the Senate of the State of Rhode Island and Providence Plantations: On June 22, 2006, the Honorable Senate as then constituted introduced Senate Resolution 2006-S 3198, which requested from the justices of this Court an advisory opinion, in accordance with article 10, section 3, of the Rhode Island Constitution, on the following question: “(1) Does [a]rticle [9], [s]ection 5[,] of the Rhode Island Constitution require that the [Governor's next appointments to the board of directors of Beacon Mutual Insurance Company be made by and with the advice and consent of the Senate?” Under Joint Resolution 2006-S 3187, on June 23, 2006, the Senate “[d]eclat[ed] and [c]onsent[ed] to a recess of the General Assembly.”¹ We take notice of the fact *277that the Rhode Island general election was held on November 7, 2006.

Our jurisprudence clearly indicates that the justices of this Court refrain from answering requests for advisory opinions from either House of the General Assembly when the composition of the legislative body that propounded the question inevitably will change as a result of an intervening general election. Advisory Opinion to the House of Representatives of the State of Rhode Island and Providence Plantations, 108 R.I.

151, 153, 272 A.2d 925, 926 (1971) (explaining that because this Court’s constitutional obligation to render advisory opinions is implicated only by “question[s] pending and awaiting action in the body which seeks our assistance^] * * * [o]ur constitution * * * does not require the justices to give an opinion to a succeeding legislative body in reply to a request propounded by a preceding legislative body”); see also Opinion to House of Representatives, 99 R.I.

151, 152-53, 206 A.2d 221, 222 (1965) (noting “[i]f the Honorable House as it is now constituted as a result of the election of November 3, 1964, desires to have these questions answered it should make its wishes known by the adoption of new resolutions”). Concerning the present request from the Senate, given the fact that this Court has not yet issued an order requesting briefing from the parties or setting a date for oral argument, we will not reasonably be able to respond before the newly composed Senate is engaged this January.

Because the Rhode Island Constitution does not obligate the justices of this Court to issue advisory opinions to succeeding legislative bodies, we are unable to entertain the request set forth in the aforementioned Senate resolution.

In re Advisory Opinion to the Governor (Casino III), 904 A.2d 67, 68 (R.I.2006) (“if our opinion is not constitutionally mandated, we will avoid offering an advisory opinion”). Our decision herein must not be interpreted as an attempt to diminish the gravity of the issues presented by the Senate’s request for an advisory opinion. Clearly, the Honorable Senate as constituted as of January 2, 2007, may adopt a new resolution propounding this same inquiry to the justices of this Court.

Conclusion For the reasons stated, we respectfully decline to entertain this request for an advisory opinion from the Honorable Senate set forth in Senate Resolution 2006-S 3198. Because, in our opinion, the rationale of this response is so clear, we do not require briefing or oral argument from any of the interested parties. Respectfully submitted, /s/ Frank J. Williams Chief Justice Frank J. Williams /s/ Maureen McKenna Goldberg Justice Maureen McKenna Goldberg /s/ Francis X. Flaherty Justice Francis X. Flaherty /s/ Paul A. Suttell Justice Paul A. Suttell /s/ William P. Robinson III Justice William P. Robinson III.

We are acutely aware of the distinction between a legislative recess, which is what happened in this case, and an adjournment governed by article 6, section 9, of the Rhode Island Constitution. For our present purposes, however, this is a distinction without a difference. Instead, as set forth below, the critical fact is were this Court to respond to the Honorable Senate’s request, we would be issuing an advisory opinion to a legislative body of different composition than that which made the request as a result of the November 7, 2006 general election.