

MAINE STATE LEGISLATURE

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September 6, 1918

To Hon. Willis E. Swift
Re: Splitting Ballots

I have carefully considered your question about counting ballots cast in the coming election.

I understand your question contains the following facts:

A man places an X in the square at the head of the Republican ticket and then in the square opposite the name of Mr. Day, candidate for State Auditor on the Democratic ticket, places another X but does not erase the name of Mr. Wardwell. The question is, How should the ballot be counted?

Chapter 306, Public Laws of 1917, provides that if a person places a X in the square above the name of the party group, he shall be deemed to have voted for all the persons named in the group under such party designation. It further provides that if he wishes to vote a party ticket with the exception of a few names, he may place his X in the square at the top of the party column, erase the name of the candidate for whom he does not wish to vote and place a X in the square at the right of the name of the candidate for that office in another party column.

This is the only method provided for splitting a ticket where the person places a X in the square at the top of the party column. Under the facts submitted by you, the intention of the voter would not be clear about his vote for State Auditor. There are two possible theories for his action.

First: That he decided to vote a split ticket by simply placing his X in the square at the right of the different parties on the ballot, and then decided to vote a straight party ticket after placing his X at the right of the name of Mr. Day.

Second: He might have decided to vote a straight Republican ticket with the exception of State Auditor.

Inasmuch as no one can know just which theory the voter acted upon, there is not one result and that is that, following the statute, he is deemed to have voted for every name in the party column, but that his meaning in regard to vote for State Auditor is subject to doubt and hence his vote would be counted for every person on the Republican ticket, with the exception of the State Auditor.

Franklin Fisher
Assistant Attorney General

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