

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1918

MERRILL & WEBBER CO., AUBURN, MAINE

PRINTERS AND BOOKBINDERS

Hence, logs and pulp wood are otherwise subject to taxation under existing laws of the State of Maine within the meaning of Chapter 253, P. L. 1917. With the exception of the personal property mentioned all personal property situated permanently or temporarily within an unorganized township comes within the provisions of Chapter 253, P. L. 1917.

Yours very truly,

FRANKLIN FISHER,
Asst. Attorney General.

REGISTER OF DEEDS—ELIGIBILITY OF MEMBER OF
BOARD OF REGISTRATION TO OFFICE—EFFECT
OF MAJORITY- VOTE FOR INELIGIBLE CANDI-
DATE.

Portland, Maine, 1st October, 1918.

Hon. Frank W. Ball, Secretary of State, Augusta, Maine.

DEAR SIR: You have made inquiry as to the legality of the election of a Register of Deeds who was at the time a member of the board of registration of the City of Rockland and as to the procedure to be followed by the Governor and Council if such Register of Deeds be declared ineligible.

By Chap. 5, Sec. 6 of the Revised Statutes it is provided "such board (board of registration) shall consist of three members who shall be residents and legal voters of the city where such board is established; they shall not hold or be eligible to any state, county or city office however elected or appointed thereto so long as they shall continue members of said board."

Members of a board of registration of a city are by this statutory provision barred not only from holding a county office but from being a lawful candidate therefor or in other words "eligible." Eligible is defined as "legally qualified" or "fit to be chosen" or "capable of being chosen." By this provision of Chap. 5, Sec. 6 R. S. in my opinion, a member of a board of registration of a city cannot be lawfully elected to a county office which includes, of course, the office of Register of Deeds for Knox County.

I am fully mindful of the Opinions of the Justices wherein it is stated that in certain cases, under certain circumstances, and pursuant to the provisions of certain statutes, candidates for office may remove ineligibility existing at the time of the election

or appointment at any time before the actual taking of office. But it does not seem to me that this opinion is applicable to the special provision of Sec. 6, Chap. 5, R. S. Members of boards of registration not only are prohibited from holding office but are also declared to be ineligible to office. Two thoughts were evidently in the minds of the Legislature which enacted this provision. One, that a member of a board of registration should not hold office and the other that while he was a member of a board of registration and therefore part of the machinery which conducted and controlled the election, and if he were a candidate, his own election, he was not capable of being a candidate for election, not "fit to be chosen" not "legally qualified" to run for office. If a member of a board of registration could remove his ineligibility after election by resigning as a member of the board of registration, it would be possible for such member to exercise some influence in the matter of qualification of voters who would vote for or against him and in a close election be actually responsible for the results. Foreseeing such a possibility the Legislature guarded definitely against it. In my opinion a member of a board of registration cannot be lawfully elected to any state, county or city office.

It is the duty of the Governor and Council, by virtue of Sec. 53, of chap. 7, R. S. to open and compare the votes returned, have the same tabulated and declare to be elected the persons having the highest number of votes. Such persons shall be notified by the Secretary of State and enter upon the discharge of their official duties on the first day of January thereafter. However by Section 41 of Chapter 7, R. S., it is provided that

"no person ineligible to the office shall be declared elected;"

Again in the same section it is provided that

"no person shall be declared elected who has not received a majority of the whole number of votes counted."

It is also provided in the same section that "in case of *** county and state officers *** having the highest number of votes given at such election shall be declared elected and the Governor shall issue a certificate thereof."

And again it is provided in the same section in all cases not otherwise provided for—"If no person eligible to the office receives the requisite number of votes to elect him, then the Governor shall order a new election."

Section 41 of Chapter 7, R. S., apparently is the original provision governing the determination of the results of an election and must control except in so far as it is modified by Section 53, of the same chapter which is in fact a provision definitely directed to the question of correction of returns and historically is supplemental to section 41 both in matter of substance and in date of enactment.

In reply to your inquiry as to the proper procedure for the Governor and Council to follow I will therefore say that if it is established as a fact that the person receiving the highest number of votes for Register of Deeds of Knox County was in fact a member of the board of registration of the City of Rockland at the time the election was held, such person should not be declared elected and an affirmative finding should be made that upon hearing it appeared to the Governor and Council found that such person was ineligible and that no person eligible to the office had received the requisite number of votes to elect him and therefore the Governor ordered a new election of a Register of Deeds for Knox County.

Very truly yours,

GUY H. STURGIS,

Attorney General.

BRIDGE LAW—APPLICATION TO CASE WHERE ONLY
ONE OF TWO TOWNS INVOLVED WILL HAVE TAX
RATE IN EXCESS OF FIVE PER CENT.

July 25, 1917.

*Paul D. Sargent, Chief Engineer, State Highway Commission,
Augusta, Maine.*

DEAR SIR: Your request for a construction of Section 5 of Chapter 319 of the Public Laws of 1915, appearing in the appendix of the Revised Statutes of 1916 has had my consideration and I will say:

You state that the particular situation or state of facts presented is that the construction of a bridge between two towns on a main thoroughfare, which is also a state or state aid highway, should be built or rebuilt and that the proportion of the cost of construction thereof which one of the towns would legally bear,