

MAINE STATE LEGISLATURE

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July 8, 1922

To Hon. Frank W. Ball, Secretary of State
Re: Ballots, Unfolding before Entering Booth

You ask this department for an answer to the following question:
"Is it lawful for a voter, after receiving his ballot from an election clerk, to unfold the ballot before entering the voting booth?"

It is proper to assume, I think, that any act is lawful which is not forbidden by some statute or which is not unlawful under the common law. I am unable to find any statute which forbids a voter's unfolding his ballot before entering the voting booth, and believe there is none.

It is true that Section 16 of Chapter 7, Revised Statutes (1916), provides:

"On receipt of his ballot the voter shall forthwith and without leaving the enclosed space, retire alone to one of the voting shelves or compartments,"

and that Section 92 of Chapter 7 says that any voter who shall allow his ballot to be seen by any person with the apparent intention of letting it be known how he is about to vote shall be subject to a penalty. This last section applies, I have no doubt, to the time after a voter has received the ballot and before he has entered the voting booth, for it might be possible for a voter by signs or otherwise to indicate on an unfolded ballot how he intended to mark it or for whom he intended to vote.

The reason why a voter is prohibited from exhibiting his ballot after he has marked the same is because the Australian Ballot Law provides for a secret ballot in the interest of pure elections and to prevent corruption, and the law should be construed with that idea in view.

Any act, therefore, on the part of a voter which is not expressly prohibited by law, or which does not have the effect of imparting information as to how a ballot is marked, or is to be marked, is not forbidden.

Your question is therefore answered in the affirmative, but with the qualification that the intention and acts of the voter when he unfolds his ballot govern.

If he allows it to be seen with the apparent intention of letting it be known how he is about to vote, it is a violation of the law, otherwise not.

William H. Fisher
Deputy Attorney General