

# MAINE STATE LEGISLATURE

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**PUBLIC DOCUMENTS**

OF THE

**STATE OF MAINE**

BEING THE

**REPORTS**

OF THE VARIOUS

**PUBLIC OFFICERS  
DEPARTMENTS AND  
INSTITUTIONS**

FOR THE TWO YEARS

**JULY 1, 1928 - JUNE 30, 1930**

STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1929-1930

Other more substantial changes might aid in carrying out more effectively the purpose and content of the amendment. The interpretation which the Law Court has given to the Constitution as it stands without legislation, has, however, cast the administration of the amendment into a mould which it is doubtful if the Legislature has the authority to break or substantially alter. In so far as there is reasonable criticism of the manner in which the amendment under the existing rulings must be enforced, however, it is, of course, the privilege of the Legislature to consider and pass such legislation as may be constitutional. Beyond that the remedy, if any is needed, is for the people, who have it within their power to alter or amend the Constitution at any time. In this letter, I have, however, been concerned with the situation as it legally is and not with possible changes.

Very truly yours,

CLEMENT F. ROBINSON

Attorney General

## GRAND JURY REPORTS—LEWISTON BALLOT FRAUDS

### STATE OF MAINE

Androscoggin, ss.

AT THE SUPERIOR COURT, begun and holden at Auburn, within and for the County of Androscoggin, on the first Tuesday of October in the year of our Lord one thousand nine hundred and twenty-nine.

The Grand Jurors for said County, having been called together in special session for the purpose of inquiring into the count of ballots in the recent state referendum election in the City of Lewiston, have examined carefully into the circumstances and have had presented to them the testimony of a great many witnesses, including police officers in attendance while the count was in progress, wardens and ward officers present while the count was going on, certain bystanders and all persons who participated in the counting of the ballots Wards One to Six inclusive.

We respectfully report as follows:

Under the statutes and the law as they stand we are unable to find sufficient evidence to enable us to bring in any indictment against any persons of person for any acts in connection with this election and count of ballots.

We are, however, convinced that in several of the wards and particularly in Wards Three, Four and Five, the miscount on election night, which was proved by the recount to have been made, was so grossly inaccurate and incorrect that we can only conclude that there was wrongdoing on the part of some at least of the persons participating in the original count.

We are, however, blocked from bringing in an indictment partly because of the absence of definite proof as to the particular person or

persons who participated in this wrongdoing and partly by the lack of what seems to us adequate statutes to prevent such wrongdoing and to enable it to be detected if and when it occurs.

We feel so strongly that statutory changes should be made which would make any such similar occurrence difficult to accomplish and possible to detect that we take this opportunity to make some recommendations which we respectfully submit to the Court with the hope that it will receive some publicity and perhaps accomplish some good.

In the first place it seems to us that the statutes require the same publicity to be given to the expenditures made by any person, firm or corporation interested in a referendum that is now required for campaign contributions. The evidence before us indicates that in all of the wards votes were counted by certain persons who had previously been employed and paid for their services by those interested in securing a certain result on one of the referendum questions submitted. In some of the wards particularly in Ward Five substantially all of the ballot counting was done by such persons. While we have no evidence to prove and therefore do not assert that the actual wrongdoing was done by these persons, nevertheless we feel strongly that it is an unfortunate situation that only through Grand Jury examination can the facts be learned as to these payments.

Secondly, we strongly feel that the statutes are defective in not providing definitely that ballots should be counted by duly constituted officials, sworn to their duty and definitely entrusted with the duty of correctly counting the ballots. Under the existing statutes as applied in the City of Lewiston, ballots are actually counted, to a large extent, by by-standers selected without system or responsibility and there are no statutory penalties for wrongdoing by these ballot counters, who are not regular officials.

Next, we feel that the statutes should forbid the counting of ballots in a referendum election by persons who have received pay from any person, firm or corporations who have been interested in securing a certain result from the referendum.

We also feel the statutes should definitely punish any persons counting ballots who purposely miscount and thus aid to defraud the voters at the election from obtaining the proper counting of the votes which they have cast.

We also believe that it would be wise for the statutes to provide that those who actually count the ballots at an election should be required to preserve the result of their count and forward it with the ballots and election returns, so that these figures would be preserved as a basis for checking on a recount the place where and the person or persons by whom errors or mistakes in the count have been made, thus definitely fixing the responsibility for such errors or mistakes as are made. Under the present system as we find it was in Lewiston at the time of the recent election, no evidence was preserved as to the particular ballots which were counted by each counter or the count

which that counter made. All that was preserved was the total vote of the ward as certified by the ward officers, which record combined figures and data from several counters without showing what figures each counter made or which ballots each counted.

We cannot express too strongly our condemnation of the very apparent frauds in the count of votes that was made in this election, but we are helpless under the law as it exists to bring in any indictment against any person or persons. We hope, however, that the eventual adoption of some at least of these suggestions may result in preventing the recurrence again of such a situation.

EARLE H. BICKLER, *Foreman*

FRED H. LANCASTER

*Attorney for the State for said County*

CLEMENT F. ROBINSON, *Attorney General*

Note: See P. L. 1931 c. 34, embodying many of the Grand Jury's suggestions.

### ELECTIONS—BALLOT MARKING

July 16, 1930

To the Honorable The Governor and Council,  
Augusta, Maine  
Gentlemen:

In my opinion primary ballots marked with a cross after the name of a candidate, in the absence of any definite evidences of fraud, should be counted for that candidate even though the cross is not made within the square.

Section 14 of the Primary Election Law says that the voter should mark a cross "in the square to the right of" the printed name of a candidate; a cross "to the right of" a name written or pasted in. Section 8 of the same Act prescribes that the ballot shall be printed so as to give the voter an opportunity to vote by a cross "to the right of the name of each candidate." The same section requires the ballot to bear the words "make a cross in the square to the right . . . . add names . . . . and mark cross to right of such names."

If it were an open question the proper ruling might well be that the cross must be in the square in the case of the printed names. In other cases a cross anywhere to the right would be sufficient. The Law Court has, however, given a liberal interpretation and eliminated the requirement that the cross be within the square. See 124 Me. 488, 490-2.

The Court seems to have felt that the Legislature had clearly indicated a requirement that the voter must make a cross, but had not so clearly required the cross to be within a square. Where the cross is within the box, it is at least within a rectangle, but apparently the Court would hold the same of a cross even if it is wholly outside of the ruled spaces.

Very truly yours,

CLEMENT F. ROBINSON

Attorney General