

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, 1930 - JUNE 30, 1932

STATE OF MAINE

REPORT

OF THE

Attorney General

for the calendar years

1931-1932

REFERENDUM PETITIONS

June 1, 1931

To Hon. Wm. Tudor Gardiner
Governor of Maine

You inquire as to the date for calling a referendum election on an act passed by the legislature of 1931, in case petitions sufficiently signed by ten thousand voters are seasonably submitted to you under art. 31 of the amendments to the state constitution.

Your action in this respect is governed by the provisions of that amendment, and also by P. L. 1931, ch. 181, although the signing and filing of the petitions themselves are governed only by the constitutional amendment.

Your first duty is to determine whether sufficient petitions have been seasonably filed. Your procedure in this respect is governed to some extent by sec. 5 of the act above referred to. Should you determine that a hearing is necessary for the purpose of determining the validity of the petitions you should set a hearing in the senate chamber within one hundred days after the adjournment of the legislature. There is, however, no express time limit on the period within which you are to determine as to the validity of the petitions. The implication is that you will do it as soon as you reasonably can. Until you have so determined it is, of course, impracticable to set the date for the referendum election.

As soon as you have determined that adequate petitions have been seasonably filed you are to give notice thereof and of the time for the election.

The request that such election be held at a certain definite time may be made in the petitions, and if so should be conformed to if you find it practicable to seasonably determine the validity of the petitions.

If, however, no such election date is specified in the petitions you are guided simply by the provisions of the constitution. I understand that no election date is specified in the petitions now being circulated.

The constitution sets as one possibility for the election date the "next general election not less than sixty days after such proclamation."

There is no general election during the year 1931 to which this provision is applicable. The legislature has set an election for September 14th on the question of amending the constitution as to the number of state senators. It is obviously unlikely that you can determine the validity of the referendum petitions prior to July 16th, which would be a prerequisite to your setting September 14th as the date for the referendum election. Moreover, it seems doubtful to me whether an election on the sole question of a certain amendment to the Constitution is a "general election" within the meaning of the Constitution. To be sure, it is an election held generally throughout the state, but it is an election on a limited and special subject, not a stated regular election for general purposes. It is an election specially set by a special act for a special purpose.

The "next general election" subsequent to September 14th is the election to be held in September, 1932. The option will be yours whether to set this general election as the date for a referendum election, or whether to call a special election at a date not less than four months nor more than six months after your proclamation determining the validity of the requested referendum.

TAXATION OF SAVINGS BANKS

November 21, 1932

To Hon. Frank H. Holley
State Tax Assessor

Regarding the tax returns of savings banks, the question is whether profits accruing from day to day during the six months' period are to be included in the "undivided profits" which form one element of the tax basis. My answer is in the affirmative. It seems to me that the statute, as worded, contemplates that at the close of business on each day the capital, surplus and entire profits accrued and undistributed up to the close of business on that day should be totalled and averaged with the corresponding figures for every other day during the period.

As a matter of law I base this on the ordinary meaning of the expression "undivided profits"; viz,—that it means profits that have not been divided.

Confirming my view, I find in the reports three cases under federal tax laws.

The earliest of these cases is *Leather, etc. Bank v. Treat*, 128 Fed. 262 (1904). This case held that a bank's accumulating profit and loss fund is taxable as "surplus" under a tax on capital and surplus. The case makes this ruling in the face of a concession in the case itself that in the nomenclature of banks the term "surplus" does not include "undivided profits."

The second case is *Harder v. Irwin*, 285 Fed. 452 (D. C. N. Y. 1923). This case holds that "undivided profits" include accumulations between the close of the preceding year and the date of distribution.

The leading case is *Edwards v. Douglass*, 269 U. S. 204 (1925). Here the Supreme Court of the United States discussed in great detail the meaning of the expression "undivided profits" under the federal income tax law. The point at issue was whether certain dividends were paid from profits of the current year or from profits of a previous year. The rate of taxation varied accordingly. The contention of the government that "undivided profits" includes the current earnings of the year was upheld by the court. The taxpayer claimed that the phrase "undivided profits" had a technical meaning; viz,—that earnings determined by computing inventories and balancing books at considerable intervals of time, approximately at the end of the fiscal