

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

Since considerable public interest has accompanied the investigation, I am reporting my conclusions to the Governor and Council. My object was to learn whether there were indications that serious crimes were committed, such that further action by this department might be necessary. My conclusion is: No. Crimes are of two general classes,—felonies and misdemeanors. The election laws specify many misdemeanors which may be committed in connection with registration, balloting, and the returns, but no felonies. The investigation indicates plenty of irregularities in the method of conducting the registration and balloting, but if any misdemeanors were committed, they appear to have originated in carelessness, ignorance, and the practice of past years. As far as this department is concerned, these may be much better corrected by education and an enlightened public opinion in the future, than by seeking to punish any individuals on this occasion.

There are of course felonies which may originate from elections. Were these indicated by the investigation, grand jury action at the instance of this department might well be required. It would of course be a felony for election officials or voters to conspire together with the deliberate intent to produce a fraudulent election. Such a conspiracy might be shown by evidence from statements made and results reported, tending to show a concert of mind between different persons for the purpose of avoiding the election laws and falsifying the balloting or the returns. That was the theory on which the state proceeded in the case of several election officials in Portland some years ago, where the result of the polling showed that the ballot box had been stuffed with marked but unvoted ballots. The prosecution failed, and a verdict was directed against the state, because of lack of evidence to connect the defendants on trial with the wrongdoing. The present investigation wholly fails to substantiate any ground for proceeding on any such theory against any persons.

In short, I find no occasion for the taking of any action whatever by this department to enforce criminal liability upon any persons.

ELECTION LAWS—POWER OF GOVERNOR AND COUNCIL

October 18, 1932

To Hon. Wm. Tudor Gardiner
Governor of Maine

I have your inquiry regarding the action proper for the Governor and Council to take on the petition of Fred C. Sturtevant under date of October 12, asking an investigation on the eligibility of James Boyle of the town of Sumner to hold the office of representative to the eighty-sixth legislature of the State of Maine.

In my opinion this investigation is not within the province of the Governor and Council. The legislature itself is the judge of the qual-

ifications of its own members. The duty of the Governor and Council is limited to canvassing the returns and determining the result of the balloting.

ELECTION LAWS—POWER OF GOVERNOR AND COUNCIL

November 8, 1932

To Hon. Wm. Tudor Gardiner
Governor of Maine

In accordance with your request I am summarizing the situation with reference to the recount of Congressional votes in the third district, in accordance with the views I have already expressed to you in recent conferences.

All the ballots forwarded to Augusta have now been recounted, and if the original returns from the various towns as tabulated by the Governor and Council on September 28th are corrected in accordance with this recount, the candidate whose election appeared on the original tabulation, Mr. Utterback, stands elected on this corrected tabulation with a very small variation in his plurality.

The question now before the Governor and Council is whether it should go further and inquire into the circumstances under which the ballots were cast.

The Council has discussed the possibility of asking the Law Court for its opinion. Whether this is the solemn occasion which the Constitution names as the reason for such an inquiry may be a question. If the interrogations should be put, the court's answer will settle it. In the meantime, the Council have not asked my opinion. You have, however, and I am frank to say that my answer is "No." I doubt if under any circumstances the Governor and Council have jurisdiction to inquire into the circumstances of the election of a member of Congress. Certainly there is no such jurisdiction in the case now presented for their consideration.

To show the basis for my conclusion let me summarize the documents which the parties have filed, and analyze the case thus presented in the light of the statutes and opinions of the Law Court.

* * * * *

Such being the allegations in the documents themselves, do they call for action? If we assume for the present that there is no question of the jurisdiction of the Governor and Council, do these documents adequately invoke it? My answer is "No."

Should the ballots have been recounted?

First, as to a recount, which has already been completed; for the purpose of correcting the returns by the ballots themselves.

I am doubtful whether it was the duty of the Governor and Council to recount the ballots in all the precincts in the district merely on the