

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

may have a different legal meaning, according to the circumstances to which they apply. A primary election to nominate a candidate is one thing; the election of a representative in Congress quite another thing.

That the majority did not carry their own rulings to a logical conclusion in all respects is shown by the fact that they did not authorize the Governor and Council to throw out the ballots fraudulently cast for any candidate who had not, within the proper period, discovered the facts and taken the point. If fraud is so abhorrent that it should by no possibility achieve its object, the logical conclusion would be that upon Mr. Brewster's discovering the fraud which apparently seated Mr. Farrington, all other candidates affected by the same fraud should also benefit or lose by the discovery of the same facts. This, however, the court would not permit. In other words, fraud in balloting to a certain extent, under certain circumstances, can be inquired into by the Governor and Council, but it is my opinion that these circumstances probably never exist where the result of a general election is in issue, and certainly are not made out either on the papers filed in this case, or under any circumstances that are reasonably likely to be shown in the third district election for representative to Congress.

What the Law Court would say, if interrogated again, as the Council has considered doing, of course I do not know. But, as far as I am concerned, I have no doubts of the conclusions I have reached.

Conclusion

Finally, then, it is my belief that the recount of the third district Congressional election is now complete, and that the duty of the Governor and Council is comprised in correcting the preliminary tabulation on the basis of the recounted ballots, and announcing the result accordingly.

ELECTION LAWS—POWER OF GOVERNOR AND COUNCIL

November 28, 1932

To Hon. Wm. Tudor Gardiner
Governor of Maine

You inquire what, in my opinion, will be the eventual situation as far as the Governor and Council are concerned if there should be a deadlock on affirmative votes proposed with reference to the recount of ballots cast in the third district for member of Congress in the recent state election.

This recount is now going on for the purpose of correcting the returns in accordance with R. S. ch. 8, sec. 55, if these returns are found erroneous. The Governor and Council tabulated the original returns in September and determined that a certain candidate appeared to be elected. The recount was invoked by a candidate who appeared to be defeated by the returns as thus tabulated.

It is my opinion that in the event of such a deadlock, and in the absence of any affirmative action by the Governor and Council as a result of the recount, the original tabulation stands unaffected by the petition for a recount and the recount itself. In such case the Governor and Council have not "found . . . erroneous" the original return, and no correction has been made therein.

I am further of the opinion that the person shown by the original tabulation to have been elected is accordingly entitled to a notification thereof by the Secretary of State in accordance with the next to the last sentence of the first paragraph of section 55, and that the Governor may properly direct the Secretary of State to issue this notification.

To be sure, this sentence says that the successful candidate "shall be declared elected." It has been and is the very proper practice for the Governor and Council to declare the election of the successful candidate at the conclusion of a recount, or at the expiration of the twenty days' period for filing petitions, in case no petition has been filed. This formal declaration by the Governor and Council is, however, it seems to me, merely a ministerial duty which does not affect the right to the office, and to a notification thereof by the Secretary of State to the person who was elected on the face of the returns as at first tabulated, if the tabulation stands unchanged.

Any other candidate has his recourse thereafter to other tribunals for the purpose of establishing his own right to the office as against the person who thus obtains the prima facie right to it on the basis of the original tabulation, and the Secretary of State's notification thereof.

FEES, FINES AND FORFEITURES

December 4, 1931

To Sumner P. Mills, Esq.
Judge Municipal Court
Farmington, Maine

You inquire with reference to the interpretation of P. L. 1931, ch. 189 and 252, which relate to the disposal of fines, forfeitures and costs in certain criminal cases in which the state highway police and inspectors are concerned. Your particular inquiry is as to what should be paid over to the State Treasurer when a member of the highway police accompanies the sheriff as a aide. Two objects were sought by the legislature in passing these acts, which were before the legislature in several drafts and redrafts at various times, and were the subject of some controversy both in committee hearing and in the senate.

One of these objects was to assure the county of one-half of the fines and forfeitures in certain cases which had previously been collected wholly by the state.

The other object was to assure the payment direct to the State Treasurer from the court of such sums as belong to the state by way