

# MAINE STATE LEGISLATURE

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December 4, 1936

The Honorable Governor and Council  
Augusta, Maine

Sirs:

Answering your recent inquiry relative to the two absentee ballots cast in the town of Hermon at the General Election, as to whether or not said ballots should be counted, and concerning which certain objections have been raised as to an alleged irregularity on the part of the election officials regarding said votes, I am pleased to inform you that the courts have held, in effect, that your board is a canvassing board whose duty it is to ascertain and declare the apparent result of the voting.

It appears that the votes returned, including said absentee ballots, appear to be in accordance with the certificate returned by the election officials so that on the face of the returns there does not appear to be any irregularity, or that they are erroneous in any particular.

The only objections to the counting of these ballots seem to be with reference to certain irregularities claimed to be on the part of the election officials, which is a question for the courts rather than for the canvassing board; the court has said in "Questions and Answers", 124 Me., 496, that:

"Adequate authority is vested in the Judicial Department to hear and determine all such questions under the election law. It could serve no purpose to vest such authority in the Governor and Council when it could not be final. For these and other reasons unnecessary to enumerate at length, we think it inconceivable that the Legislature could have intended under the election law to have so radically changed the nature of the duties of the Governor and Council from those of a purely canvassing board to those of a judicial or quasi judicial body with power to judge elections, without clearly expressing such an intent. We find the whole trend of judicial decisions is against any such authority being granted by implication."

It therefore is the opinion of this department that said absentee ballots should be counted.

Respectfully submitted,

ST. F. H.

Sanford L. Fogg, Deputy Attorney General