

# MAINE STATE LEGISLATURE

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July 23, 1940

To the Attorney General from Assistant Attorney General Fessenden.  
Re: Election Error - Correction

Section 16 of R. S., Chapter 7, as amended by Chapter 75, P. L. 1931, provides for corrections to be made when returns of primary elections are found to be erroneous by the Governor and Council. However, it specifically provides:

"No such correction can be made without application within 14 days after the returns are opened and tabulated."

In the case of Rounds v. Smart, 71 Maine 380, it is held in part that the Governor and Council, as a canvassing board, are bound to obey the requirements of the statute. It is stated that the same power which creates a canvassing board may determine the limits within which it may act and prescribe its rules of action.

It is my opinion that within the decision in this case, the Governor and Council will have no authority to correct an error unless the same is discovered and action taken within the 14-day limitation. The same case holds, as do many other Maine cases, that it is the manifest duty of all holding official positions to give full effect to the will of the people as expressed at the ballot box.

I find no provision in the statute for the correction of returns or errors when the same are discovered subsequent to the 14-day limitation.

According to 20 C. J., 197, it would appear that the general rule is that when election officers have completed their duties, they have no authority to add to, change or alter or to make new returns; that thenceforth any correction must be done under the direction of the canvassing board. But then, in this State, by statute referred to above, the powers and duties of the canvassing board, namely the Governor and Council, are limited by legislative enactment.

It is my conclusion that the Governor and Council do not have authority to correct the error at this late date.

It is indicated in 20 C.J. 197 that where, through fraud or mistake, the returns do not correctly state the number of votes cast as shown by the tally sheets, inspections of election may be required, by mandamus, to make a true return of the vote as actually cast, and the canvassers may likewise be required to canvass such corrected returns.

While the dispute in this case involves a primary election rather than the official election, I see no reason why the same general principles should not apply, with the sole difference that in this case the candidate seeks to have his name placed on the ballot rather than to hold office.

I have been unable to find any requirement of law or any method by which State officials can assist the candidate at this time in having his name placed upon the ballot. I would suggest that his remedy is through the courts.

John S. S. Fessenden