

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

January 9, 1941

To Hon. W. Mayo Payson

Re: Election to Fill Vacancy in Legislature - Postponement in Special Case.

Fred Scribner tells me you feel it is necessary for the City of Portland to have an election immediately to fill the vacancy now existing in the legislative delegation from that city.

I know how careful and conscientious you are and you are fully aware of my great respect for your legal acumen and knowledge. However, I respectfully call your attention to the wording of R. S. Chapter 8, Sections 58, 74 and 72. Section 58 applies to towns and provides that when the selectmen have knowledge that the seat of a representative has been vacated, "they shall forthwith issue their warrant" calling for an election.

Section 74 provides that where there is a vacancy in the seat of a representative from class towns, the selectmen of the oldest town

"shall, as soon as may be, leaving a convenient time for calling meetings in the several towns, appoint a day of election to fill such vacancy."

Section 72, however, applying to the City of Portland, has the following language:

"The aldermen. . . shall call meetings of the wards for the purpose of filling such vacancy."

In this latter case there is no suggestion that hurried action is necessary or even contemplated.

If I remember correctly, our courts have frequently declared that the words "shall" and "may" in the statutes are to be interpreted according to the context, and that the word "shall" is not to be regarded as necessarily mandatory. I recall using that argument in a brief just a year or so ago and I furnished citations to back up the argument.

I recognize the fact that the City of Portland is entitled to its full representation. However, it is not my understanding that there has been any demand that the vacancy be filled. On the other hand, I understand that there exists a desire to save the city the expense of a special election. Under the circumstances I believe you will be fully justified in instructing the City Council that until there is an actual demand for an election to fill the vacancy, there will be no positive necessity of the said Council's acting in the matter.

Frank I. Cowan
Attorney General

FIG:GH