STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

From: July 21, 1942
The Attorney General

To:
Harold I. Goss,
Acting Secretary of State

The Absent Voting Law (R. S. Chapter 9, § 6, as most recently amended by P. L. 1941, Chapters 15, 17 and 170) provides that a voter who is in the armed services of the country, whether within or outside the State of Maine, may mark his ballot "in the presence of any commissioned officer of the army, navy or marine corps, including officers of the national guard, officers' reserve corps, naval militia, naval reserve, or marine corps reserve in federal service" who are respectively authorized under said Chapter 17 to administer the oaths required in said Absent Voting Law.

The statute provides further that the voter shall enclose and seal the envelope and mail the same "by registered mail requesting return receipt thereof, postage prepaid at any post office, or may deliver the same in person or by his or her accredited agent as above provided". (See said Chapter 15)

The Federal Congress has provided that men in the armed forces of the Federal Government may send mail without paying postage. Therefore the words "postage prepaid" are meaningless as far as soldiers' mail is concerned.

The provision "by registered mail requesting a return receipt therefor" cannot, in my opinion, be regarded as mandatory, but simply as a protective measure. Certainly there can be no connection between the registering of the envelope containing the ballot and the acceptance of that ballot by the municipal officers. The voter gets evidence that his ballot has been received if he sends it by registered mail and gets back a return receipt, but otherwise this provision is of no particular value to him and certainly it can be of no value to a municipality or to the State. I find, as a matter of fact, that the town and city clerks accept absentee ballots as a matter of course when they come through the mail even though they are not registered, and that procedure is to my mind the correct one.

FRANK I. COWAN
Attorney General

From: July 22, 1942
Frank I. Cowan, Attorney General

To:
Harold I. Goss, Secretary of State

I have your memo of July 21st, asking several questions in regard to nominations "outside the primaries". I will answer the questions in the order in which you ask them.

1. The fact that a candidate has been such in a primary does not bar him from the right to nomination outside of the primary under

Sections 30-31-32-33 and 34 of the primary election law. The subject is discussed in 20 Corpus Juris, Page 126, paragraphs 139 and 140.

2. Your question reads as follows: "Is the signature of a duly registered voter on the petition for nomination outside of the primaries an invalid signature because of the fact that he has signed a petition for primary nomination for the same office?"

Section 5 of the primary election law provides as follows: "Each voter may subscribe his name to one nomination for a candidate for each office to be filled . . . . " Section 32 of the primary election law which has to do with nomination of candidates not included in the primary, contains the following language: "Each voter signing a nomination paper shall make his signature in person, and add to it his place of residence, and each voter may subscribe to one nomination to each office to be filled, and no more."

The above phraseology appearing twice as it does in the statutes, in one place in regard to the primary petition and in the other place for petition for nomination outside the primary, indicates that the Legislature considered the primary election and a nomination at a convention or caucus (as provided in Section 30) or by special nomination papers (as provided in Section 32) as two entirely separate and different acts. Both it is true, have as their objective the obtaining of candidates for the final election, but the primary election is, by Section 28 of the Act, set up as "a separate election for each political party making its nominations hereunder" and the Courts have uniformly held that a "primary election" is an "election" just as much as an election where all the people exercise their choice among candidates put up by different parties.

A "convention of delegates", a "caucus" and a "meeting of qualified voters" mentioned in Section 30 as places at which candidates not included in the primary may be nominated, cannot be considered as a part of the Primary Election. Neither can "nomination papers" as provided by the first and second sentence of Section 32 be considered as a part of the Primary Election.

It is, therefore, my opinion that a person who has signed a petition for a candidate in order to get his name on the primary ballot of his party, is not thereby barred from signing a nomination paper or taking part in a convention of delegates or taking part in a caucus or taking part in a meeting of qualified voters and voting there for some other person to run in the final election with a different party designation from that which appeared on the primary ballot.

3. Your third question reads as follows: "Is the signature of a duly qualified voter on the petition for nomination outside of the primaries an invalid signature because of the fact that such voter participated by voting at the primary election?

My answer to this question must be "No", by reason of the fact that we use the secret, so-called Australian, ballot in our primary

election. If the voter can be proved to have voted for some other candidate at the primary election, it is possible that he might be barred from taking part in a subsequent convention, caucus or meeting of qualified voters, or from signing a nomination paper for some other person to appear on the final ballot. The reason for this is that his act of voting in the convention, etc. or signing the nomination paper is exactly equivalent to his act of voting in the primary election and under our laws a voter is not permitted to vote twice for a candidate for the same office. However, since there is no way of proving how the man voted at the primary election, nor is there any way of proving that he actually voted at all, even though he may have received a ballot from the ballot clerk and may have entered a voting booth and may have returned and dropped the ballot in the ballot box, in the absence of statute, there is nothing to prevent his taking part in the nomination of some other candidate outside of the primary.

Your fourth question is in regard to procedure. Inasmuch as that is a question that it seems to me you will not have to trouble yourself about, I respectfully decline to answer.

Attorney General

July 29, 1942

To:
Governor Sewall

From:
The Attorney General

Municipal Court Judges

Under Article VI, Section 8 of the Constitution of Maine there is a provision for the appointment of Judges of Municipal and Police Courts "By the executive power, in the same manner as other judicial officers, and shall hold their offices for a term of four years".

These Judges of Municipal and Police Courts, when paid a salary, must necessarily be recognized as State employees. The source of salary is not material.

There is a sharp distinction betweeen these Judges of Municipal and Police Courts so provided for in the Constitution on the one hand, and Judges and Registers of Probate and Justices of the Peace and Notaries Public on the other hand. The Judges and Registers of Probate are officials elected by the people of the county and there is nothing to justify considering them as State employees. On the other hand, Justices of the Peace and Notaries Public, although appointed by the Governor, are officials given certain authority for which they have a right to charge small fees. But their authority is almost exclusively one for their own convenience to be used in connection with private business affairs. There is no reason, therefore, for considering Justices of the Peace and Notaries Public as State employees.

FRANK I. COWAN
Attorney General