

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

March 15, 1944

Governor Sewall

Executive

Soldiers' Voting

As you are aware, Mr. Goss and I had considerable discussion as to whether or not the Civilian Defense Act (P. L. 1941, c. 305) is sufficiently broad to authorize the Governor to issue an Executive Order modifying the existing statutes to permit of registration of voters in cities having more than 3,000 population in the same way that they are registered in towns. The Act is extremely broad, and if modifying the registration laws is something indissolubly linked to the "welfare" of the people of the State of Maine, and if it will assist in "coöperation with the Federal government," then it is within the provisions of that statute.

The fact that the Legislature intended to give to the Governor authority to take care of emergencies that may arise so that a special session would not be necessary, does not necessarily mean that the Executive should so act in all cases. I have given this matter a great deal of thought and have reached the conclusion that the Legislature cannot delegate to the Executive authority to make any changes in the election machinery. The fact that Chapter 305 is purely a War measure cannot alter that opinion. The constitution has placed on the Legislature the exclusive duty of setting up a system of elections. The constitution provides further that no one of the three branches of government shall exercise any of the functions exclusively delegated to the other branches. Election statutes, in my opinion, fall into that exclusive class and only by act of the Legislature can they be changed.

FRANK I. COWAN
Attorney-General

March 27, 1944

Governor Sumner Sewall

Subject: Federal Ballot for Soldier Voting

I. The Federal Constitution, Article II, §1, Paragraph 2, provides for the election of the President and Vice President in the following language: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors." This language is clear and hardly requires interpretation. The legislature of the State of Maine can by a majority vote, provide the qualifications for persons who shall vote in the November election for the electors for President and Vice President of the United States. Moreover, since Congress has set the form of a ballot and has authorized the states to use this ballot for presidential electors, if they see fit, the legislature can by simple majority vote accept that ballot and authorize the election officials of the several precincts of the State to count them along with any other ballots that may be lawfully cast at said election.

II. The Constitution of the United States, Article I, §2, Paragraph 1, provides that in the election of representatives to Congress "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." The same