

# MAINE STATE LEGISLATURE

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December 27, 1957 *mo*

To Honorable Edmund S. Muskie, Governor of Maine  
Re: West Paris - Classification

. . . You ask us to look into the problem of classification of the Town of West Paris with respect to representation in the Legislature.

Chapter 130, Private and Special Laws of 1957, is an Act to Incorporate the Town of West Paris. The Act contains no statement revealing the intent of the Legislature as to the status of the newly organized town with respect to its inclusion in any district organized for the purpose of county, state-wide elections, or district elections.

By Chapter 24, Resolves of 1955, being "A Resolve to Apportion Representatives among the Several Counties, Cities, Towns, Plantations and Classes in the State of Maine", it is provided that the County of Oxford shall choose eight Representatives, and the Towns of Paris, Woodstock and Milton Township (unorganized), as a district, were apportioned one of such eight Representatives.

While you do not so state, we perceive that the problem involves the status of Bessie L. Mann, who was elected Representative to the Legislature by the district above mentioned, but who, after the purpose of Chapter 130, P&SL 1957 is accomplished, will be a resident of the newly organized Town of West Paris, which newly organized town would be outside the said district.

It is with extreme reluctance that we consider answering your question. Firstly, by Article IV, Part Third, Section 3 of the Maine Constitution, it is provided that

"Each house shall be the judge of the elections and qualifications of its own members."

Under such a provision, it is within the exclusive jurisdiction of the House of Representatives to judge of the qualifications of its members, and no function of the Attorney General to substitute his opinion for that of the House of Representatives.

Secondly, it is a general principle that a law, once enacted, is to be considered by the Attorney General to have been properly enacted and therefore constitutional.

Our examination of the law, however, convinces us that the question involves many facets which broaden the problem far beyond that of selection of a Representative to the Legislature, and that an opinion from us at this time will reduce the number of problems that might arise in the future.

It is our opinion that Chapter 130, Private and Special Laws, 1957, is unconstitutional, with the result that Bessie L. Mann remains the duly elected and qualified Representative to the Legislature from the representative district comprised of Paris, Woodstock and Milton Township (unorganized).

Article IV, Part First, Section 2, Maine Constitution, sets the number of Representatives to the Legislature at 151, sets up the formula by which the Representatives shall be apportioned among the counties, cities and towns, and limits re-apportionment within a period of at most ten years and at least five. See Opinion of Justices, 148 Me. 409, to the effect that an apportionment, once made, must continue for five years.

Also involved in a consideration of the problem is the constitutional provision granting to all citizens of this State, with certain limitations with which we are not here concerned, the right to elect a governor, senators and representatives, in the city, town or plantation where his or her residence was established.

This office has no doubt but that the Legislature can change municipal or county lines, by merging or consolidating municipalities or organizing new municipal corporations; but such changes must be done in a manner consistent with the limitations contained in the Constitution. Thus, an act setting off one town from another should, by a proper provision in the Act, and for the purpose of electing Representatives until the next apportionment of Representatives, provide that such town be and remain a part of the town from which it was taken.

See the acts setting off the Town of South Bristol from Bristol (Chapter 133, Private and Special Laws of 1915) and the Town of North Kennebunkport from the Town of Kennebunkport (Chapter 191, Private and Special Laws of 1915).

Section 7 of Chapter 133 reads as follows:

"Until a new apportionment of the State is made for the choice of representatives to the Legislature, said towns shall both remain in the same representative district with which said town of Bristol is now classed."

Section 6 of Chapter 191 reads as follows:

"Until the next legislative apportionment of representatives the town of North Kennebunkport shall be classed with Kennebunkport and Old Orchard."

A similar provision was omitted from the Act authorizing the organization of the Town of West Paris. Such an Act would contemplate the organization outside any district created by the last apportionment act, thereby leaving the citizens of such town in the position of not being eligible to be an elector for a representative. This cannot be. The Legislature must make provision that the new town remain in the already existing representative district of which it was a part, for the purpose of electing representatives, or the Act must fail.

FOR CASES SEE Opinion of Justices, 6 Cushing 575 and 578 (Mass.) and Warren et al. v. Mayor and Aldermen of Charlestown, 2 Gray 84 (Mass.) It is said in Opinion of Justices, 6 Cushing 575, 577:

"We are therefore of opinion, in answer to the first question, that it is not competent for the legislature, when incorporating a new town from territory of one or more existing towns, to authorize such new town to elect a representative to the general court before the next decennial census of polls shall have been taken, after its incorporation.

"In answer to the second question, we are of opinion, that it is within the constitutional power of the legislature, when incorporating a new town, consisting of territory set off from another town, or from two or more towns, to provide by law that the new town, or the inhabitants of that part of the new town which was taken from the old town, shall be and remain a component part of the town or towns to which such territory originally belonged, for the purpose of electing the representatives to which said original towns were entitled by the preceding census of polls, until a new decennial census of polls shall be taken."

See also Opinion of Justices, 33 Maine 586, 587:

"The transfer of territory, and of inhabitants residing upon it and entitled to vote, from one representative district to another, is an alteration of a right of representation in both of those districts before the next general apportionment. . .

"The right of the Legislature to incorporate a town composed of parts of several other towns is not intended to be denied or questioned. If not done at the time of a general apportionment, provision maybe made that such inhabitants as are entitled to vote for a representative shall remain united to their respective districts for the election of a representative, until the next general apportionment."

It is for the above reasons that we feel compelled to advise you of our opinion, so that the proper parties can be advised and that steps can be taken, if it is deemed desirable, to remedy the matter.

James Glynn Frost  
Deputy Attorney General