

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1959 - 1960**

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June 1, 1959

To: Maurice F. Williams, Administrative Assistant, Executive Department  
Re: Procedure in Filling Vacancies in the House of Representatives

We have your oral request for information relating to the procedure in filling vacancies in the House of Representatives.

It appears that the Governor need not initiate any action but should await a request for a proclamation from interested cities or towns.

The statutes place the burden upon the cities or towns represented to take the steps necessary to fill such vacancies.

With respect to cities, the law is as follows:

. . . "and when the municipal officers of any city have knowledge that the seat of a representative therein has been vacated, they shall call meetings of the wards for the purpose of filling such vacancy; and like proceedings shall be had at such meetings as at other meetings for the election of representatives. (R. S. c. 5, sec. 58.)"

The laws relating to towns are seen in sections 73 and 74 of Chapter 5:

"Sec. 73. Vacancies in representative district. —When the selectmen of the oldest town in a representative district are notified or otherwise satisfied, that at the last meeting of the district for the election of a representative no choice was effected, or that the seat of their representative has been vacated, they 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, and notify the selectmen of the other towns accordingly. (R. S. c. 5, sec. 74.)"

"Sec. 74. Meetings and proceedings. — The selectmen of the several towns shall by warrant call meetings to be held upon the day appointed, and proceedings shall then be had as required by the constitution and laws for the election of representatives on the 2nd Monday of September. (R. S. c. 5 sec. 75.)"

Once the towns or cities have decided upon a date for election, the request will be made upon the Governor to proclaim the facts under the provisions of Chapter 4, section 46.

"In case a vacancy occurs in any office except that of United States senator, governor or representative to congress which is to be filled at the next biennial state election for which no nomination has been made at the primary election held on the 3rd Monday in June of the same year, nominations shall be made as provided in this section. When such a vacancy occurs, the governor shall, by proclamation, declare such fact and fix a date and place for the meeting of the appropriate committees. Certificates for supplying the vacancy and the manner of placing the name of the nominee upon the ballots shall conform to the provisions of section 56. (R. S. c. 4, sec. 45, 1949, c. 300, 1955, c. 47, sec. 4.)"

The Secretary of State will assist in the procedures requested and, as usual, will administer the details relating to the Governor's proclamation.

We are advised by the office of the Secretary of State that the machinery to fill a vacancy takes at least three to four weeks, so that no steps can be taken to fill the vacancy of this current sitting of the legislature. It has been suggested by the Deputy Secretary of State that, barring unforeseen circumstances, it might be convenient if such elections were to be held at the time of the special September elections; such time for election would call for a minimum expenditure of funds.

JAMES GLYNN FROST  
Deputy Attorney General

June 2, 1959

To: Honorable Allan Woodcock, Jr.  
Senate Chambers  
State House  
Augusta, Maine

Dear Senator Woodcock:

We have your request to look into the relationship of the length of the legislative session to the referendum questions being submitted to the people for vote on the second Monday of September. As an example of such a question, one proposed constitutional amendment is being presented to the people on that date.

Under the provisions of Article IV, Part Third, Section 16, acts or joint resolutions of the legislature with certain exceptions not here pertinent including emergency legislation, become effective ninety days after the recess of the legislature.

For reasons discussed hereafter, we believe that the only safe course to follow is to assume that the above referred to ninety-day period should have expired in time for local officers to give seven days' notice to the electors of the coming September 14 election. In other words, the resolve presenting the question to the people should become effective at least seven days before the date of the September election. If the act does become effective in time to permit such posting prior to the election, then many possible difficulties will be obviated.

Article X, section 4, of the Maine Constitution, is that section relating to the procedure to be followed in amending the constitution:

"Section 4. The legislature, whenever two-thirds of both houses shall deem it necessary, may propose amendments to this constitution; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations in the manner prescribed by law, at the next biennial meetings in the month of September, or to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of senators and representatives, on the second Monday in September following the passage of said resolve, to give in their votes on the question, whether such amend-