

# 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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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-

ment shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this constitution.”

It should be noted that this section of the constitution provides that the election at which the people indicate their vote for the proposed amendment must be held on definite dates and that the notice of the inhabitants of the towns and plantations shall be in the manner prescribed by law for calling and holding biennial meetings for the election of senators and representatives. The dates, therefore, on which proposed amendments may be submitted to the people are for the 1959 year, Monday, September 14, (second Monday in September) or the next biennial election date in 1960.

Following this direction, Chapter 52, Resolves, 1959, provides that the proposed Amendment to the Constitution to Provide Continuity of Government in case of Enemy Attack shall be presented to the people at a special state-wide election to be held on the second Monday in September, 1959.

In examining the law for the method of notifying the electors for the election of senators and representatives, we find that Section 16 of Chapter 5, R. S. 1954, directs that the manner of notifying the inhabitants of the biennial election shall be by warrant in the same manner as provided by law in the case of town meetings.

The manner of calling a town meeting is set forth in sections 30-33, Chapter 90-A, R. S. 1954 as enacted by Public Law 405, 1957. Each meeting shall be called by warrant (section 30) and, “an attested copy (of the warrant) posted . . . at least seven days before the meeting, unless the town has adopted a different method of notification.” Section 31, IV.

It has been repeatedly and consistently held that noncompliance with the mode of notifying the electors renders the meeting illegal. *State v. Williams*, 25 Maine 561; *Bearce v. Fossett*, 34 Maine 575; *Brown v. Witham*, 51 Maine 29; *Sanborn v. Inhabitants of Machias Port*, 53 Maine 82; *Clark v. Wardwell*, 55 Maine 61.

Thus, notice of the election must be posted seven days prior to the election.

The question arises as to whether the seven days posting is so much a part of the resolve that the legislature must give consideration to the matter.

Generally, no act required to be taken under a legislative enactment may be taken until the enactment becomes effective under the provisions of the constitution.

If this were not so, then the referendum provisions of the constitution (Article IV, Part Third, Section 17) permitting the electors upon petition to the Governor within ninety days of the recess of the legislature to suspend an act, bill, or resolve, until the electors should have voted thereon, would be quite ineffective.

The purpose of the ninety-day period is to permit the people to finally pass on the work of the legislature. The result is that the acts passed are completely ineffective until the ninety-day period passes, unless the act is such that the ninety-day period is not required.

In conclusion, it is our belief that without a doubt the problem of posting is a real one and should be considered by the legislature.

Very truly yours,

JAMES GLYNN FROST  
Deputy Attorney General

June 3, 1959

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

Dear Senator Woodcock:

You have asked this office to comment upon legislation authorizing the issuance of bonds which legislation, under the provision of Article IX, section 14, of the Maine Constitution, must be ratified by the people. Your question is asked with the thought that this general session of the legislature might continue sitting beyond this week before adjourning without day, and you request our opinion on the steps that should be taken if the legislature does continue to sit until a problem is reached in relation to the term of the session and the date such question can be voted upon.

It has been the custom for one of the bills referring questions to the people for ratification by a referendum vote to contain a date at which such referendum will be held.

Once such a date has been so set, all other referendum questions follow more or less automatically, and are voted upon at the same date.

As we indicated to you in our letter yesterday, such a date was set in Chapter 52, Resolves of 1959, a proposed Amendment to the Constitution providing for Continuity of Government in case of Enemy Attack. We also indicated that, under the provision of Article X, Section 4, Maine Constitution, the dates which proposed constitutional amendments can be voted upon are definitely established as being either the second Monday in September following the passage of the resolve, or the next biennial meetings in the month of November, 1960.

The date for such referendum was set, in the Resolve, for the second Monday in September.

All other referendum questions, would as above stated, be voted upon at the same date.

If the legislature were to sit beyond a point where the posting of notices and day of election could not be accomplished outside the constitutional 90 day waiting period, then all such referendum questions would, presently, be alike affected.

The legislature can take steps to eliminate the problem by proper Legislative Act.

We would point out that the bond issues involved have alternative dates upon which the electors could vote — the next general election, or at a special election.