

MAINE STATE LEGISLATURE

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*This Opinion overruled by decision dated 3/9/60
by C.J. Williamson in Hancock et rel. Atkins (Laming et al.
F.A.D. #16) Case.* February 23, 1960

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Method of voting to join a school administrative district
when a town has accepted Sec. 37, Chapter 90-A.

There have been many queries regarding the proper method of voting when a town has accepted the provisions of Sec. 37, Chapter 90-A. There is apparently a divergence of opinion among the lawyers advising the various municipalities.

Chapter 41, section 111-F, subsection IV provides as follows:

" . . . the Commission shall order the question of the formation of the proposed school administrative district and other questions relating thereto to be submitted to the legal voters of the municipalities which fall within the proposed school administrative district. The order shall be directed to the municipal officers of the municipalities which propose to form a school administrative district, directing them to call town meetings or city elections, as the case may be, for the purpose of voting in favor of or opposition to each article in the following form: . . ."

Chapter 90-A, section 37, subsection IV, provides that when 10% of the number of voters that voted at the last gubernatorial election file a petition, the selectmen shall place a particular article on next ballot printed or call a special meeting for its consideration, providing that it is subject to the same filing provisions as nomination papers under this section.

Chapter 90-A, section 37, subsection V c, provides: "Any question required by statute to be submitted to a vote shall be printed below the list of the candidates.

There is no other authority in Chapter 90-A for placing an article on the secret ballot. The secret ballot (Sec. 37, Ch. 90-A) was designed for municipal elections, and not meetings. It is used only for the election of town officials, placing an article on the ballot, (subsection IV, Sec. 37, Ch. 90-A) and voting on a question required by statute to be placed on the ballot (subsection V A, Sec. 37, Ch. 90-A).

Most town meetings are two separate functions; an election of officers and a town meeting. The town meeting is a deliberate body where the qualified voters may meet, deliberate, act and vote on the exercise of corporate powers.

Overruled

There is no authority in Sec. 111-F, Chapter 41, for the voters of a town to adopt a method other than is used at a town meeting. In fact, the statute appears to authorize towns to use only this method. Therefore, I do not believe that subsection IV, section 37, of Chapter 90-A, is applicable. The town deriving its powers and duties from the legislature can act only in the manner authorized by statute.

Subsection V C, section 37, Chapter 90-A, in my opinion, is not applicable since section 111-F, Chapter 41, provides articles to be voted upon rather than posing a referendum question. Further, there is no statutory requirement but merely directions on forming the articles in a permissive statute.

There has been the argument advanced that a vote by the secret ballot (Sec. 37, Chapter 90-A) would preserve the rights of the voters more adequately than an open town meeting. I fail to see how the deprivation of the right to a discussion prior to voting on the article would preserve the rights of the inhabitants.

Our New England type of town meeting has been held to be the purest form of democracy, for the qualified inhabitants have an indisputable right to vote on every article, as well as to discuss it.
87 C.J.S. 37 Sec. 19.

I am still of the opinion that the proper method for conducting a town meeting to vote on whether or not to join a school administrative district is by an open town meeting. The method of voting in town meeting is not changed and the various methods may be employed which are in use at the present.

I strongly advise that Chapter 41 be amended so as to clarify the procedure for voting to join a district and the election of directors for the future.

GAW:H

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