

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

for the calender years

1961 - 1962

## OPINIONS

January 5, 1961

To: T. T. Trott, Jr., Director of Research & Statistics, Labor & Industry

Re: Information for Labor Directory

I have your request of December 15, 1960, relating to acquiring statistics from the Maine State Federated Labor Council.

Section 2, Chapter 30, Revised Statutes of 1954, provides in part:

"The department shall collect, assort and arrange statistical details relating to . . . trade unions and other labor organizations and their effects upon labor and capitol."

Section 3 provides that the commissioner may furnish a list of interrogatories "to any person, or the proper officer of any corporation operating within the state. . ."

The informant required to answer shall not have his name disclosed without his consent and it is further provided that such information is confidential.

It appears that under Section 3 you can require the information by interrogatories.

GEORGE A. WATHEN

Assistant Attorney General

January 10, 1961

To: Honorable John L. Knight  
Chairman of the House Committee on Elections  
House of Representatives  
State House  
Augusta, Maine

Dear Mr. Knight:

We have your inquiry with regard to the status of absentee votes in the contest by Carlton Day Reed, Jr., against T. Tarpyn Schulton for a seat in the Maine House of Representatives. We understand that approximately 113 absentee ballots are being challenged by Mr. Reed because the applications were not signed by the selectmen pursuant to the provisions of Section 7, Chapter 6, Revised Statutes of 1954. It is understood that there is no allegation of fraud in connection with this contest and that the ballots themselves were properly signed by the voters.

Section 13 of Chapter 6 says that:

"No ballot presented under the provisions of this chapter shall be rejected for any immaterial addition, omission or irregularity in the preparation or execution of any writing or affidavit required herein, nor shall any such ballot be counted if the officers charged with the duty of counting the same are cognizant of the fact that the voter has died prior to the opening of the polls on the day of election."

In an opinion given former Governor Muskie by the Justices of the Law Court on the eleventh day of December 1956,<sup>1</sup> the court differentiated between

mistakes made by the voters and mistakes made by officers charged with the duty of processing and tabulating ballots.

“We conclude that the provisions of the statute touching the procedure to be employed at the polls and the disposition of applications and envelopes following an election are directory and not mandatory in nature. In other words, violation of the statute by election officials in the situations here under consideration, at least in the absence of fraud, is not a sufficient ground for invalidating ballots.

“We distinguish between acts of the voter and acts of the election officials. The voter must comply with the statute insofar as his acts are concerned. Failure, for example, of the voter to take the prescribed oath invalidates his vote. *Miller v. Hutchinson*. 150 Me. 279.”<sup>2</sup>

Based upon the above citations and references, it is our opinion that the failure of the selectmen to sign the affidavit at the bottom of the application for an absentee ballot in no way affects the validity of the vote.

Very truly yours,

THOMAS W. TAVENNER  
Assistant Attorney General

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<sup>1</sup> 152 Me. 219.

<sup>2</sup> *Opinion of the Justices*, supra, footnote number 1 at page 225.

January 11, 1961

To: Austin H. Wilkins, Commissioner of Forestry

Re: Setting off Public Lots — Brown Company

I have your request for our opinion regarding whether or not the owners of a township which has an unlocated public lot may force you as an agent of the state to lay off the public lot.

No action can be maintained against a state by one of its citizens without the consent of the state.

Section 28, Chapter 176, provides that lots reserved for public uses must be first set off when there is a partition of real estate. This does not appear to be the case here. Sections 48 through 64, inclusive, Chapter 36, Revised Statutes of 1954, provide for public reserved lots. Section 48 provides that in townships or tracts not sold and not incorporated, may by agreement be set off by the proprietors and the Commissioner. Section 49 provides that when an agreement cannot be reached as to location, the Commissioner may petition the Superior Court for the appointment of commissioners to set out the location. This section provides a condition precedent that the timber and grass rights have not been sold. Section 56 provides for location where portions were reserved on grant and have not been located by the grantee, the Superior Court may appoint, *on application of the Commissioner*, 3 persons to locate the lot.

In the present fact situation, I do not believe the Brown Company has any statutory authorization to bring an action against the state to set off the public lot. In the absence of such authority, they could not maintain an action.

GEORGE A. WATHEN  
Assistant Attorney General