

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

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