

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

February 2, 1961

To: Honorable Sanford Jack Prince
House of Representatives
State House
Augusta, Maine

Dear Mr. Prince:

We have your request for an opinion as to the legality of legislative document 263, a proposal to separate the Town of Harpswell into two separate towns to be known as Harpswell and Harpswell Neck. Section 10 of this proposed law would give the citizens of Harpswell Neck the right to vote upon this proposal and their approval would be essential to the formation of the new town. The residents of the original town of Harpswell would not be entitled to vote in this referendum. As I understand it, the question which you have raised is whether or not this procedure is valid.

Boundaries of towns are created by the legislature and cannot be changed by the inhabitants. The legislature, however, can change them at pleasure. *Ham v. Sawyer*, 38 Me. 37, 41 (1854). 117 A.L.R. 267, 271. Unless the legislature makes the act conditional upon the acceptance of the division by the affected residents, the division takes effect without the necessity of any such acceptance. "In the absence of conditional provisions therein, an act of incorporation becomes imperative and binding whenever it takes effect, without any formal acceptance on the part of its inhabitants." *Westbrook v. Deering*, 63 Me. 231, 235-236. (1874). See also *Jonesport v. Beals*, 131 Me. 37 (1932).

Therefore, it is our conclusion that the legislature of the State of Maine can divide any town in the State as it sees fit and need not submit such division to the approval of the residents.

The next question is whether or not the legislature can make such a division subject to the approval only of those residents living in the area which will become the new town. A statute making partition of a town dependent upon the favorable vote of the townspeople is not unconstitutional as an invalid delegation of legislative authority. *Stone v. Charlestown*, 114 Mass. 214 (1873). *Little Rock v. North Little Rock*, 72 Ark. 195 (1904).

In the case of *Stone v. Charlestown*, the Massachusetts legislature passed a law incorporating the Town of Charlestown into the City of Boston. This merger was attacked on the grounds that the delegation of the power of approval to the voters was unconstitutional. The court pointed out that although the legislature had the absolute power to alter town boundaries, it had been the usage of that legislature "to submit acts dividing or uniting towns, or annexing a considerable part of the territory of one town or city to another, to the acceptance of the inhabitants of one or both of the towns or cities whose boundaries are thus altered."

It is our conclusion that section 10 of legislative document 263 would be valid and that the legislature has complete control and authority to decide the manner in which the proposed division shall be approved.

Very truly yours,

THOMAS W. TAVENNER

Assistant Attorney General