

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

August 25, 1961

To: Governor John H. Reed

Re: Validity of Appointment of Chairman of Board of Registration of Voters

You have requested us to give an opinion with regard to the advisability of asking the Supreme Judicial Court for a ruling as to whether or not the appointment of the Chairman of the Board of Registration of Voters of Lewiston was valid.

Under the terms of the Constitution of the State of Maine, the Justices of the Supreme Court are required to give opinions to the Governor only when the occasion for that opinion is "solemn." At one time it was thought that any determination by the Governor that an occasion was solemn would not be questioned by the Court. See 95 Me. 564 (Dissent). However, our Supreme Court has ruled that it will first decide whether or not an occasion is solemn before it answers a request for an opinion. *Opinion of the Justices*, 95 Me. 564, 567. The Justices of the Supreme Court thus have the final authority to determine whether or not they will answer a request for an opinion.

It has been determined that opinions requested of the Supreme Court will be given only if their giving enables the requesting party to take affirmative action. *Opinion of the Justices*, 147 Me. 410, 415. Where no action is possible on the part of the requesting authority, no opinion will be given by the justices; *Opinion of the Justices*, 95 Me. 564, 567. *Opinion of the Justices*, 147 Me. 410, 415-416; 148 Mass. 623; nor will the Supreme Judicial Court give an opinion involving the rights of parties where those same rights can and may be the basis of subsequent private litigation which could eventually come before the said Supreme Judicial Court. *Opinion of the Justices*, 95 Me. 564, 569-571.

It thus appears:

1. That the Court will determine when a solemn occasion exists.
2. A solemn occasion does not exist where no affirmative action can be taken by the requesting party.
3. No solemn occasion exists when the issues forming the basis of the request can be determined by private litigation.

In the instant case, the Chairman appointed by you, which appointment was contested by an appointee of the Mayor of Lewiston. Your appointment has already been made, and there does not seem to be anything further which you, as Governor, can do with regard to this matter. The dispute between the two gentlemen in question can, and should be, resolved through the ordinary judicial processes. For either of these reasons, it is our opinion that the Supreme Judicial Court would determine that the occasion for an opinion determining this controversy would not be solemn. They would, therefore, refuse to give an opinion.

THOMAS W. TAVENNER
Assistant Attorney General

September 12, 1961

To: Steven D. Shaw, Administrative Assistant, Executive Department

Re: Council Order Number 444

Reference is made to your memo of August 22 in which you ask for our comments relative to the jurisdiction of the Governor and Council in this matter.