

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

September 27, 1961

To: Honorable John H. Reed, Governor of Maine

Re: Meaning of Term "Regular Election" — Public Laws of 1961, C. 302

This is in answer to your request for an interpretation of the term "any regular election" as contained in Chapter 302 of the Public Laws of 1961.

Subparagraph E-3 of Chapter 302, Public Laws of 1961, provides:

"Paragraph E shall not be effective in any city until a majority of the legal voters, present and voting, at *any regular election* so vote, and shall not be effective in any town until an article in a town warrant so providing shall have been adopted at an annual town meeting. The question in appropriate terms may be submitted to the voters at *any regular city election* by the municipal officers thereof and shall be so submitted upon petition of at least 20% of the number of voters voting for the gubernatorial candidates at the last state-wide election in that municipality. Such petition shall be filed with the municipal officers at least 30 days before *such regular election*. When a municipality has voted in favor of adopting paragraph E, said paragraph shall remain in effect until repealed in the same manner as provided for its adoption." (Emphasis supplied)

The key phrase in the above-mentioned section is "The question in appropriate terms may be submitted to the voters at any regular city election. . ." The words underlined above "any regular election" and "such regular election" relate to the words "any regular city election." It is my opinion that "any regular city election" does not mean a general election for state, county or national officers, a referendum election or special election but means the city election provided for in the city charters for the election of municipal officers.

The same reasoning applies to a town vote on the question, i.e., the question may be presented at the annual town meeting and not at a special meeting.

FRANK E. HANCOCK

Attorney General

September 28, 1961

Governor John H. Reed
State House
Augusta, Maine

Dear Governor Reed:

We have an inquiry from Alvin W. Perkins as to his status as Judge of the Piscataquis Municipal Court after October 7, 1961, the expiration date of his present term.

Sec. 2 of Chapter 386 of Public Laws, 1961, refers to the transition from the present municipal court system to the district court system. The second paragraph of that section reads as follows:

"After the effective date of this act, except as provided in the following paragraphs, no trial justice and no judge, associate judge

or recorder of a municipal court shall be appointed or reappointed; but the term of any trial justice and of any judge, associate judge or recorder of a municipal court, holding office at the time of the effective date of this act, which shall expire prior to the establishment of the District Court in the district in which such trial justice resides, or such municipal court is located, is extended until such establishment.”

In our opinion, this language extending the terms of municipal court judges violates the constitution. Article VI, section 8 of the Maine Constitution states that judges of municipal courts shall be appointed and hold this office for 4 years. This cannot be abrogated by legislative act.

The law further provides that:

“If in a municipal court the office of judge becomes vacant prior to the establishment of the District Court in the district in which such municipal court is located, and there is an associate judge of such court, he shall thereafter, and until the District Court is established in the said district, be paid the same salary as provided for the office of judge of such court. If such court has no associate judge, the Governor may, with the advice and consent of the Council, notwithstanding that such court may already have a recorder, appoint an associate judge of such court to serve until the establishment of the District Court in such district; and such associate judge shall be paid the same salary as provided for the office of judge of such municipal court. Upon the establishment of the District Court in the said district such municipal court shall cease to exist, and all cases pending in such court and all of its records shall be transferred to the District Court for the division in which such court was located; and all persons then on probation pursuant to order of such municipal court shall be deemed to be on probation under the order of said District Court.”

By Private and Special Act the Piscataquis Clerk of Courts is automatically recorder of the Piscataquis Municipal Court. By statute a recorder becomes an associate judge if he is a member of the bar. At the present time Keith N. Ederly, an attorney, is Clerk of Courts of the County and Associate Judge of Piscataquis Municipal Court. Therefore, he will continue to serve as Associate Judge and be paid the same salary as provided for the office of Judge. Judge Perkins’s duties will cease as of October 7, 1961.

In those jurisdictions in which judges’ terms expire before the establishment of a district court and where there is no associate judge, you may appoint an associate judge for a term of four years. Upon the establishment of a district court, such municipal court and the associate judge’s duties will cease to exist, albeit he will continue to be, in name, an associate judge until the expiration of his four-year term. Of course, he may resign at any time.

Judges whose terms expire before the establishment of a district court may, of course, be reappointed as associate judges for four-year terms, provided there is no associate judge presently serving.

Very truly yours,

FRANK E. HANCOCK

Attorney General