

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

November 27, 1962

To: Paul A. MacDonald, Secretary of State

Re: Time Limit for Requesting Recount

You have asked for an interpretation of the time limit stated in Chapter 3-A, Section 127, relative to recounts. This section, in the first sentence, provides:

“On the written application of a candidate in any election within 10 days after copies of the tabulation are made available to the candidates, the Secretary of State shall permit him or his counsel to recount the ballots under proper protective regulations.”

When are the tabulations made available to candidates?

What is the time limit within which a recount may be asked?

These are the two questions that have to be answered.

Section 122 provides that “within 15 days after an election the Secretary of State shall tabulate the election returns and submit the tabulation to the Governor and Council.” In subsection III of this section it requires the Secretary of State to have “copies of the tabulation printed and made available to the public.”

Section 131 provides in part:

“The Governor and Council shall review the tabulation of the vote. . . . and determine. . . . the persons to whom the Governor shall issue certificates of election or notices of apparent election except. . . .”

Referring back to Chapter 122, subsection III, the tabulations are “available” to the public as soon as they are printed and delivered to the Secretary of State’s office by the printer. There is no requirement that he distribute them to all persons constituting “the public.”

There is no requirement that the Secretary of State distribute the tabulation of votes to the candidates. So it would follow that the tabulations are “available” to the candidates when the Governor and Council have completed their review of the tabulation.

The time limit for requesting a recount expires 10 days after the Governor and Council complete their review of the tabulation of votes.

In 1962 the Governor and Council completed their review of the tabulation of votes on November 21. The 10 days expire on December 3, 1962. That is because the 10th day falls on Saturday. Chapter 3-A, section 3, provides that when the date on which an act must be performed falls on Saturday, the act shall be performed on the next following business day.

GEORGE C. WEST
Deputy Attorney General

November 28, 1962

Mrs. Alice B. Mann
Acting Executive Secretary
State Board of Barbers
Vickery Hill Building
Augusta, Maine

Dear Mrs. Mann:

We have your note in which you ask several questions relating to the licensing of an apprentice barber. The questions and our answers are as follows:

Question: May the Board of Barbers continue to license as an apprentice barber an individual who has twice failed the barber examination? This individual qualified for the two previous examinations by serving the statutory eighteen month apprenticeship.

Answer: The Board may continue to license this individual as an apprentice barber. There is no statutory provision which would prevent the Board from issuing an apprentice license. An apprentice barber qualifies for an apprentice license by: 1) commencing apprenticeship with a registered barber, and 2) by filing the necessary information with the Board. Revised Statutes, Chapter 25, section 230-I.

It is mandatory upon every apprentice barber after eighteen months of apprenticeship to apply for the barber examination. To any applicant qualifying to take the examination, the Board *may* issue a permit to practice barbering pending the results of the examination. It is not mandatory that the Board issue the permit. It should be noted that the permit to practice barbering pending the results of the examination is a different right than the apprentice license, although the applicant is to be considered as an apprentice. Section 230-J.

After two failures of the barber examination, the law does not permit the Board to issue a renewal of the permit to practice barbering pending the results of the examination, Section 230-J. There is no mention of any restriction on the continued issuance of an apprentice license. Such a restriction cannot be read into the law.

Question: May the Board of Barbers lawfully issue a renewal of a permit to practice barbering pending the results of the examination to an applicant for examination who has twice failed the examination?

Answer: Revised Statutes, Chapter 25, section 230-J, does not permit the renewal of a permit to practice barbering after the second consecutive failure of the examination.

You have asked several questions as to the procedure which should be followed to revoke an apprentice license in the event the licensed individual is not lawfully entitled to the license because of two failures of the barber examination. In view of our answer to your first question there is no need to answer these questions.

Sincerely,

PETER G. RICH
Assistant Attorney General

November 28, 1962

To: Ober C. Vaughan, Director of Personnel

Re: Personnel Board, Membership of

We have your request for an opinion as to who may be elected to be the fifth member of the Personnel Board. Revised Statutes, Chapter 63, section 3, provides as follows:

“The 5th member of the board shall be elected by the other 4 members of the board from department heads for a 2-year term, and until their successors are elected and qualified.”