

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**For The Calendar Years**

**1963 - 1964**

be effective in any town until an article in such town warrant so providing shall have been adopted at an annual town meeting. When a city or town has voted in favor of adopting the provisions hereof, said provisions shall remain in effect therein until repealed in the same manner as provided for their adoption. (1959, c. 302, § 2. 1961, c. 362, § 2.)" (Emphasis supplied).

Section 38-B makes it illegal to sell mobile homes on Sunday. Section 38, the general "Sunday law" section lists many exceptions to the closing law. Section 38-A sets the procedure for a local option to keep open "other places of business not exempted under Section 38." In other words, municipalities are free to enlarge the list of exemptions, unless otherwise prohibited by law. Section 38-B is a specific mandate of the legislature, and is not subject to the local option provision. By its very existence, Section 38-B falls beyond the purview of the local option section.

In conclusion, Section 38-B is not affected by a vote of the municipality, pursuant to the provisions of Section 38-A.

Sincerely,

WAYNE B. HOLLINGSWORTH  
Assistant Attorney General

May 22, 1963

To: Joseph T. Edgar, Deputy Secretary of State

Re: Recount of Local Referendum Ballots

You have received a request from two residents of a town for a recount of the referendum ballots voted on at a special town meeting election held to decide if the town shall join other towns in a School Administrative District.

You ask if the Secretary of State has jurisdiction to supervise a recount in such an election.

Answer: Yes.

The election was held pursuant to R. S. 1954, chapter 41, section 111-F, subsection IV. Under this subsection the School District Commission, after certain formalities have been performed, orders the question of the formation of the proposed School Administrative District to be submitted to the legal voters of the municipalities involved.

"The order shall be directed to the municipal officers of the municipalities which propose to form a School Administrative District, directing them to call town meetings or city elections, as the case may be, for the purpose of voting in favor of or in opposition to each article in the following form:"

There is nothing more in chapter 41 concerning the manner of holding the election. The statute contemplates a town meeting to be held in accordance with the general law or local charter, if any.

The town of Cumberland was granted a charter by Private and Special Laws, 1821, chapter 78. This act simply incorporated the town of Cumberland. It does not provide for any election procedures. Hence, town meetings would be governed by the general law in R. S. 1954, chapter 90-A.

Chapter 90-A has no provision for the recounting of referendum questions. Sections 38 and 39 relate to inspections and recount of ballots where town officials are being elected.

Section 39-A provides:

"Except as otherwise provided by this chapter or by charter, the qualification of voters, the method of voting and the conduct of a municipal election are governed by chapter 3-A."

The matter of inspection and recount would be a part of "the conduct of a municipal election." Hence, the provisions of chapter 3-A would govern the method of recounting ballots in a municipal election.

The request for a recount dated May 18, 1963, addressed to the Secretary of State is proper. You should proceed in accordance with section 129.

GEORGE C. WEST

Deputy Attorney General

May 22, 1963

To: Scott K. Higgins, Director, Aeronautics Commission

Re: Airport Construction Fund

A county is planning to construct an airport with assistance from a town. Such an arrangement is cleared for federal funds under R. S. 1954, chapter 24, section 11.

You now ask if a grant from the Airport Construction Fund may be made to the county and town for the construction of this airport.

Answer: Yes.

Revised Statutes chapter 24, section 20, II, provides:

"The commission with the consent of the governor and council may from the amount appropriated to aid in the construction, extension and improvement of state or municipal airports, known as the 'Airport Construction Fund,' grant to cities and towns separately and cities and towns jointly with one another or with counties an amount not to exceed 50% of the total cost of the construction, extension or improvement of such airport or airports."

This section uses the same wording as section 11 in naming grantees of aid, namely, "cities and towns separately and cities and towns jointly with one another or with counties." From this language the intent of the legislature appears clear that those places eligible for federal aid are also eligible for state aid, and vice versa. The legislature set up a comprehensive plan whereby the state would supplement federal aid for construction, extension and improvements of state or municipal airports.

The words "municipal airports" are not defined in chapter 24 so it is necessary to turn to case law to find out the meaning of "municipal."

Our court in the case of *City of Augusta v. Augusta Water District*, 101 Maine 148 at 151, said:

"For the term municipal relates not only to a town or city, as a territorial entity, but it also pertains to local self government in general, and in a broader sense to the internal government of a state."