

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

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.”

“Elsewhere, the courts have used the term municipal corporation as applicable to a county, *Tippecanoe County v. Lucas*, 93 U. S. 108; . . . ”

There can be no question but the intent of the legislature is that aid from the Airport Construction Fund is available for the county constructing the airport with cooperation from a town.

GEORGE C. WEST
Deputy Attorney General

May 22, 1963

To: Asa A. Gordon, Co-ordinator, Maine School District Commission

Re: Towns Voting On Questions of School District Formation

Your memorandum of May 13, 1963 is hereby acknowledged.

Facts:

The residents of the territory within three municipalities desiring to form a school administrative district pursuant to Section 111-F of Chapter 41, R. S. 1954, as amended, made due application and held the requisite meeting set forth in said Section prior to voting upon the question of formation. In due course, the residents of each municipality cast votes upon the question of formation. All of the municipalities except one approved appropriate articles by majority vote.

Questions:

1. May the municipality which voted in the negative call for a new meeting to rescind its negative vote and to vote again upon the question of formation?
2. If the answer to question 1 is in the affirmative, must those municipalities which have already approved formation vote again upon the question?

Opinion:

Mechanics governing the formation of school administrative districts are set forth in Section 111-F and Section 111-G of Chapter 41, R. S. 1954, as amended. Note that IV of the former section requires that the School District Commission order the question of the formation to be submitted to the legal voters. Such order directs that the municipal officers call town meetings or city elections, as the case may be, for the purpose of approving or of disapproving the appropriate articles. Section 111-G contains language, inter alia, relative to the duties of the clerks of each municipality in the making of returns to the Commission after the residents have voted upon formation.

In *Bullard v. Allen*, 124 Me. 251, at page 261, our Supreme Judicial Court said, among other things:

“The plaintiff’s claim, that the meeting of September 30 had no authority to reverse the action of the town taken on September 15, is of no avail under the circumstances of this case. The rights of third parties or other intervening rights had not been impaired. Our own court, in *Parker v. Titcomb*, 82 Me. 180, following the universal rule in such matters, has held that a town is free to act as it pleases within its legal scope. It may take action in one direc-