

MAINE STATE LEGISLATURE

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August 25, 1965

Linwood F. Ross, Deputy

Secretary of State

Richard J. Dubord, Attorney General

Attorney General

Reference is made to your memorandum of August 18th asking my opinion on several questions with reference to the anticipated filing of petitions for the suspension of "An Act Relating to Sunday Sale of Liquor."

You inquire whether certain omissions in the petitions will invalidate the petitions and whether you have the authority to reject signatures for various stated reasons.

I find that a very extensive opinion on referendum petitions was issued by the Attorney General on November 25, 1929, which is to be found on page 105 of the Attorney General's Report for the 1929-30 biennium. Based on this opinion and on the decided cases cited therein, as well as on the pertinent constitutional provisions, namely, Article IV, Part 3, Sections 17 and 20, I must say at the outset that the Secretary of State has no authority to make any decisions as to the validity or invalidity of any petitions filed with him. Neither does he have any authority to accept or reject any signatures thereon. Title 21, Chapter 33, places certain responsibilities for the preparation and furnishing of referendum petitions upon the Secretary of State. However, the Constitution makes the determination of the validity of the petitions a matter for the sole authority of the Governor.

"There is no power to pass on this question except that conferred upon the Governor. The Governor alone is clothed with the power to determine and declare whether in a given instance it appears that the required number of bona fide electors have so expressed themselves."
116 Maine 581.

While I would not, therefore, consider it ordinarily appropriate to answer your specific questions, in view of the public interest in this proposed referendum I will comment further. The petitions prepared under the direction of the Secretary of State contain detailed instructions which I suspect were prepared and have been used through the years to accord with our court decisions. These instructions appear to follow the law very carefully, and those instructions containing the word "must" are to be considered mandatory instructions. Those containing the word "should" are to be considered merely directory.

August 25, 1965

I would suggest that in the interests of handling these petitions efficiently that you confer with the Governor's office to determine what procedure he desires followed. It would seem to me that it would be helpful if the office of the Secretary of State were to segregate the petitions once filed into categories suggested by your memorandum which would facilitate inspection and decision by the Governor.

In answer to the other questions which you raised, it is my opinion that additional petitions can be filed at any time prior to the 90-day deadline. However, no amendment to any petition and no additional petitions can be permitted following the 90 days. 114 Maine 567.

I can see no objection to allowing interested persons to inspect the petitions under your direction or under that of the Governor's office. The cases hold that the Governor may hear evidence on the validity of the petitions and signatures and it would, therefore, seem to follow that anyone desiring to present such evidence should be permitted the opportunity to fully examine any petition.

Richard J. Dubord
Attorney General

RJD:H

cc: Governor John H. Reed