

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1965 - 1966

of the cost of the project related to machinery and equipment.”

When considered as a whole, the intent of the legislature as expressed by its enactments gives the Industrial Building Authority the right to insure first mortgages of machinery and equipment.

QUESTION NO. 2:

May a savings bank originate a loan for which the payments are insured by Maine Industrial Building Authority, made wholly or in part for machinery and equipment?

ANSWER NO. 2:

We respectfully decline to answer this question. It is not a matter which is of concern to the Maine Industrial Building Authority. This is a question which should be more properly addressed to the Bank Commissioner.

GEORGE C. WEST
Deputy Attorney General

July 15, 1966
Secretary of State

Linwood Ross, Deputy

You have requested my opinion on the legality of the withdrawal by a nominee for State Representative who was nominated at the June 20th primary election. Your question is based on the fact that Section 446 of the election laws requires any candidate to file with his primary petitions a consent that he will accept the nomination, that he will not withdraw, and that he will qualify for the office if elected. The consent form which is printed on our primary nomination petitions reads as follows:

“I consent to the herein proposed nomination, agree to accept if nominated at the primary election; not to withdraw; and, if elected at the general election, to qualify as such officer.”

This consent form must be signed by any candidate in a primary.

The question you present appears to be one of novel impression in this State. It has never been considered by our Court. As a matter of fact, there are very few cases on the point in the United States. Over the years there have been questions posed to this Office by reason of vacancies occurring by withdrawals. However, these have usually been inquiries by the Governor’s Office with relation to the method of filling such vacancies. The question of whether the withdrawal of a candidate is permissible has never been raised and thus there are no prior decisions of this Office on the point.

My research has disclosed only three cases prohibiting the withdrawal of a nominee in a primary election. These cases all originate in the State of Nevada which requires a similar filing of a consent statement, however, under oath. There are, however, other provisions of our law bearing on the question which in my opinion make the Nevada cases inapplicable.

American Jurisprudence states the general rule to be as follows:

“As a general rule and *in the absence of a statutory provision to the contrary*, the fact that a nominee has filed his declaration of candidacy for public office and executed a statutory affidavit that if nominated he would accept such nomination

and not withdraw, does *not* prevent him from withdrawing as a candidate whenever he sees fit to do so." (Emphasis supplied)

Cases from California, Montana, Wisconsin, Maryland and New Jersey are cited in support of this proposition.

The question then boils down to whether our consent provision in Maine amounts to a statutory prohibition against resignation. This in turn is a matter of interpreting legislative intent.

In the Nevada cases, the only legislative intent expressed was the provision requiring the filing of the consent form. However, our election laws, namely section 1474, provides:

"If a person nominated for an office . . . at a regular primary election dies, *withdraws* or becomes disqualified before the general election, the Governor shall issue a proclamation as provided in section 1473 . . ." (Emphasis supplied)

The other sections referred to outline the procedure for filling vacancies by the Governor.

We thus have a situation where on one hand the Legislature has required filing an unsworn consent not to withdraw and on the other hand has provided a procedure for filling a vacancy caused by a withdrawal. I am not concerned with whatever moral or ethical commitment may result from a filing of a consent but only with its legal effect. In view of the foregoing, I must conclude that a candidate is not prohibited from withdrawing after nomination regardless of what his reasons may be.

I feel I should point out in view of the public interest in this question that the only question that has been posed to us and the only one which I have considered is whether any prohibition exists against withdrawal. I have not been asked to rule on whether a person can simultaneously seek two offices. I will add that if a nominee withdraws as I have indicated is permissible, I can see no legal objection to his seeking another office in accordance with the provisions of the election laws relating to nomination by petition namely sections 491-494.

RICHARD J. DUBORD
Attorney General

August 23, 1966
Water Improvement Commission

Raeburn W. Macdonald, Chief Engineer

State's program of aid grants to municipalities.

FACTS:

Under existing federal law 30% of the cost of sewage treatment works may be borne by the federal government and under existing state law, the State of Maine may contribute a similar amount. There is at the present moment under amendments to P. L. 660-84th Congress an increase of 10% of the 30% or a total of 33% in net federal aid available if the project for which aid is requested is part of a regional planning program.

Included in legislation presently before Congress are provisions for making 40% federal aid available in cases of a project part of a regional program, and 50% federal aid available if the project is part of a river basin program.

ISSUE:

When the Legislature enacts a law which by reference authorizes the State to provide