

MAINE STATE LEGISLATURE

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April 18, 1968

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Abstention from Voting

SYLLABUS:

Whether or not an abstention is to be considered as a "vote" on a proposed measure.

FACTS:

On December 27, 1967 ten (10) of the eleven (11) members of the Board of Directors of School Administrative District #39 and two (2) members of the three member School Committee from the town of Peru met in joint session as provided under 20 M.R.S.A. § 151 sub. §4 to elect a Superintendent of Schools and set his salary. The following votes were taken.

(1) the vote to employ an individual as Superintendent of Schools was recorded as 7 in favor, 4 opposed, and 1 abstaining.

(2) a vote to set the annual salary at \$12,000 was recorded as 5 in favor, 4 opposed, and 3 abstaining.

QUESTION 1:

May a board member legally abstain from voting on an issue?

ANSWER 1:

Yes.

OPINION 1:

The word "vote" is defined as an expression of a voter's will, preference, or choice regarding a decision on a proposed measure or proceeding, or an expression of choice through ballot, or an outcry, or any other means by which the choice of a voter may be lawfully made known or communicated to others. Commonwealth v. Baker 35 S. W. 2d 588, 549, 237 Ky. 380, (1931). While a member of such a public body has a duty to express a choice or preference, he can not be compelled to do so. Enforcement of the duty to carry out such an obligation must be resolved at the next election of the member.

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QUESTION 2:

In the instance quoted above was the salary properly set at \$12,000?

ANSWER 2:

No.

OPINION 2:

The determination of this issue is based upon whether or not an abstention is to be considered an expression of a will, preference or choice regarding a decision on the proposed fixing of the salary. Abstention is a non-expression of a preference or choice and a non-expression cannot be considered as a "vote". As the facts here indicate, a majority voting in favor of the salary at \$12,000 must contain 7 votes in favor. Here there were only 5 votes in favor.

QUESTION 3:

May the Commissioner authorize the payment of the State's portion of the Superintendent's salary considering the above vote?

ANSWER 3:

He should not.

OPINION 3:

As the "vote" was not a proper one to result in so fixing the salary, the Commissioner should delay authorization until such time as a proper vote is had on the measure. This question and answer are not particularly applicable or relevant until after July 1, 1968 as after that time the State's payment is based upon a percentage figure. Presently the State pays a fixed amount on a flat salary basis having no relationship to the amount of the superintendent's salary.

GKC/mf

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