

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date August 6, 1970

To Governor Kenneth M. Curtis Dept. Executive  
From James S. Ewing, Attorney General Dept. Attorney General  
Subject Voting Rights Act Amendments of 1970

You have requested our opinion of the effect of the Voting Rights Act Amendments of 1970 on the Maine Constitution and statutes and have requested a report of the steps necessary to implement the Act.

## I. EFFECT OF ACT UPON MAINE CONSTITUTION AND STATUTES

### 1. Literacy Test.

Section 201 (d) of the Act states that "no citizen shall be denied because of his failure to comply with any test or device, the right to vote in any Federal, State or local election. . . .". Section 201 (b) (1) defines "test or device" to include "demonstrate the ability to read, write, understand, or interpret any matter." This section is effective June 22, 1970-August 6, 1975.

Section 1, Article II of the Constitution of Maine imposes just such a prohibited test as does 21 M.R.S.A. § 241.2. "No person shall have the right to vote or be eligible to office under the Constitution of this State, who shall not be able to read the Constitution in the English language, and write his name; . . . ." (M.R.S.A. Const. Art. II, § 1). "A person who meets the following requirements may vote in any election in the municipality in which his residence is established. \* \* \*

2. Ability to read. He must read from the Constitution of the State of Maine in a manner which shows he is neither being prompted nor reciting from memory. He must write his name in English . . . ." (21 M.R.S.A. § 241.2)

Section 201 of the Act conflicts with and supersedes M.R.S.A. Const. Art. II, § 1 and 21 M.R.S.A. § 241.2.

### 2. Residency Requirements.

Section 202 applies only to voting for electors, President and Vice President. This section is effective June 22, 1970 and has no expiration date.

Section 202 (c) states in essence that no U. S. citizen "shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision . . . ." This section does not prohibit residency requirements per se but eliminates requirements of duration.

Section 1, Article II of the Constitution of Maine imposes just such prohibited durational residency requirement as does 21 M.R.S.A. § 241.4, but these provisions would not appear violative of the Voting Rights Act Amendment of 1970 inasmuch as 21 M.R.S.A. § 281 et seq. make special provision for "New Residents In Presidential Elections" and 21 M.R.S.A. § 1251 et seq. provide for "Absentee Voting" in a manner generally consistent with Section 202 of the Act, with the exceptions more fully explained below.

Section 202 (d) provides in part that absentee ballots must be returned "not later than the time of closing of the polls . . . on the day of such election."

21 M.R.S.A. § 1255 (as amended) provides in part that "In order to be valid, an absentee ballot must be delivered to the clerk before 3 p.m. on election day".

Insofar as any polls close later than "3 p.m." 21 M.R.S.A. § 1255 (as amended) would be violative of Section 202 (d) of the Act.

Section 202 (e) of the Act provides that any U. S. citizen who is otherwise qualified to vote in any State in any election for President and Vice President and who has taken up residence in a State within 30 days of such an election and thus is ineligible to vote in such State, may vote in such election either in person or by absentee ballot in the State in which he resided immediately prior to his removal to the new State.

Maine has no provisions, either Constitutional or statutory to provide for the casting of a ballot in a presidential election by a former resident who moved from Maine within 30 days of the election.

### 3. Reduction of Voting Age.

Section 302 of the Act states in essence that no U. S. citizen who is otherwise qualified to vote in any State or political

subdivision in any primary or in any election shall be denied such right to vote on account of age if such citizen is 18 years of age or older. This section is effective January 1, 1971 and has no expiration date.

Section 1, Article II of the Constitution of Maine and 21 M.R.S.A. §§ 241.3, 242.2, 312.3, 672, 831.3 all contain provisions limiting the voting franchise to those of 21 years of age or older.

## II. ACTION REQUIRED BY STATE OF MAINE

### 1. General.

It is clear that a state constitutional provision, like a state statute, must fall if it conflicts with the provisions of a federal statute, if that statute is enacted pursuant to the power of the Congress A.F. of L. v. Watson (D.C.Fla.), 60 F.Supp. 1010, rev'd on other grounds 327 U.S. 582, 90 L. Ed. 873, 67 S.Ct. 761 (1946), Katzenbach v. Morgan, 384 U.S. 641 (1966), Opinion of the Justices, 119 Me. 603, 113 A. 614 (1921), Neal v. Delaware, 103 U.S. 370, 26 S.Ct. 566 (1880).

Thus, any provisions of Maine law inconsistent with the Voting Rights Act Amendments of 1970 are simply inoperable and there is no need to call a Special Session of the Legislature to make needed changes in the law.

### 2. Action by Secretary of State.

The Secretary of State should immediately notify local Registrars, justices of the peace, notaries public and any others who may be empowered to register voters of the following:

M.R.S.A. Const. Art. II § 1 and 21 M.R.S.A. § 241.2 are suspended until after August 6, 1975 and no literacy test may be applied to any citizen attempting to register to vote.

Sometime before January 1, 1971, the Secretary of State, unless the law is determined to be unconstitutional before then, should notify all those persons empowered to register voters of the following:

The provisions of M.R.S.A. Const. Art. II § 1 and 21 M.R.S.A. §§ 241.3, 242.2, 312.3, 672 and 831.3 with respect to "21 years of age" are inoperative and any citizen who is otherwise qualified to vote must be allowed to register to vote if he is 18 years of age or older.

### 3. Action by Legislature.

At the next session of the Legislature the following changes in the Maine statutes should be made:

- a. 21 M.R.S.A. § 241.2 concerning literacy tests should be repealed. While the provisions of the Federal Act currently are effective until August 6, 1975 only, there is no doubt in our minds that the law will either be extended or made permanent.
- b. 21 M.R.S.A. § 1255 (P.L. 1967, c. 225, § 18), sentence 2 should be changed to provide either (i) that absentee ballots will be accepted until the polls are closed or (ii) that absentee ballots for election of President and Vice President will be accepted until the polls are closed.
- c. A new provision should be added to Chapter 29 Title 21 M.R.S.A. providing in essence that any resident of Maine, who changes his residence to another State after the 30th day next preceding an election for President and Vice President may vote in Maine for a President and Vice President either (1) in person if he has satisfied, as of the date of his change of residence, the requirements to vote in Maine or (2) by absentee ballot if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in Maine.
- d. If the constitutionality of Title III of the Federal Act has been upheld by the time the Legislature meets, the references in 21 M.R.S.A. §§ 241.3, 242.2, 312.3, 672 and 831.3 to "21 years of age" should be changed to "18 years of age".

At the next session of the Legislature the following constitutional amendments should be considered, although they need not be considered subject to the alternative set forth below in "4. Action by the Chief Justice of Supreme Judicial Court":

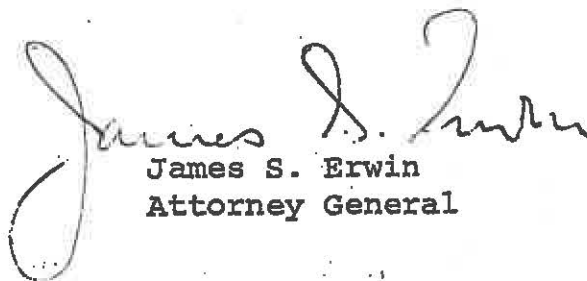
- a. Propose an amendment to M.R.S.A. Const. Art. II, § 1 repealing that part of the section which requires a literacy test.

- b. Propose an amendment to M.R.S.A. Const. Art. II, § 1 changing that part of the section which concerns itself with "21 years of age" to "18 years of age", if the constitutionality of Title III of the Federal Act has been upheld by the time the Legislature meets.

4. Action by Chief Justice of Supreme Judicial Court.

M.R.S.A. Const. Art. X, § 6 provides that "the Chief Justice of the Supreme Judicial Court shall arrange the Constitution, as amended, . . . omitting all sections, clauses and words not in force . . . and such arrangement of the Constitution shall be made and submitted whenever a new revision of the public laws of the State is authorized . . . "

If the Legislature or the people of Maine fail to amend the constitution of Maine, whenever a new revision of the public laws of Maine is authorized, the Chief Justice would be compelled to delete from the Constitution of Maine those clauses in section 1 of Article II of the Constitution which were "not in force" because they were "automatically stricken" by virtue of being in conflict with Federal statute enacted pursuant to the United States Constitution.

  
James S. Erwin  
Attorney General