

MAINE STATE LEGISLATURE

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DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

June 19 1972
NOT A FORMAL OPINION

The Honorable Louis Jalbert
State Representative
83 Elm Street
Lewiston, Maine 04240

Dear Representative Jalbert:

In response to your telephone conversations to this Department, I am giving you the following opinion.

The opinion is required because of the sudden and unfortunate death of Sheriff Bonenfant sometime during the middle of the day, while the polls were open in Androscoggin County, and voting had been underway for some time.

There is no specific case covering this situation in the State of Maine that we have been able to find on short notice. The operative Maine Statute does not specifically cover the fact situation where there are three candidates for a County office in one party's primary election and one of the candidates dies during the voting hours of the Primary Election day.

In my opinion this situation has to be covered by the provisions of Title 21, Section 1474.

First of all, if one of the two surviving candidates for the office of Sheriff in the Democratic Party in Androscoggin is the winner of the Primary Election, there is no problem. That living winner becomes the party's nominee next November.

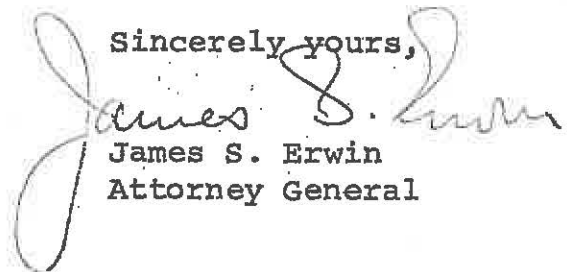
If, on the other hand, the deceased candidate is the primary election winner, in my opinion the provisions of Section 1474 must apply. A vacancy will then exist and the Governor must issue a proclamation as provided in Section 1473 ordering the Androscoggin County Democratic Committee to meet at a given time and place to nominate the party's candidate to fill the vacancy, according to the terms of Section 1442.

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In addition, of course, the Governor should also fill the vacancy for the unexpired term according to the law governing vacancies in the Office of County Sheriff.

I give the foregoing opinion because the facts compel it. The candidate for Sheriff was alive when the polls opened on Primary Day. He died some hours after voting began. Therefore, he was a living candidate for all practical purposes at the beginning of the voting day. Many people had already voted and could not come back to the polls. Many, if not most of the rest of the voters voting that day, after the candidate's death, might never be aware of the fact, making it impractical to remove his name from the ballots or the minds of the voters. If, at the end of the voting day, when the ballots are counted, the deceased candidate is in fact the winner, a vacancy will exist.

Sincerely yours,

James S. Erwin
Attorney General