

MAINE STATE LEGISLATURE

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JON A. LUND
ATTORNEY GENERAL



JOHN W. BENOIT, JR.
RICHARD S. COHEN
DEPUTY ATTORNEYS GENERAL

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

October 7, 1974

The Honorable Kenneth M. Curtis
Governor, State of Maine
State House
Augusta, Maine

Re: Edwin A. Rogers v. Edward L. Dexter & Kenneth M. Curtis, et als.

Dear Governor Curtis:

Enclosed you will find an Order of Judgment, issued by the Franklin County Superior Court in the above cited case. You will recall that this case is an appeal from a decision by you and the Executive Council. The decision was that two disputed ballots cast in the Republican Primary for District 38 Representative were valid and should be counted. This decision resulted in Edward L. Dexter winning the primary. The enclosed order of the Superior Court overturns that decision and holds both disputed ballots to be invalid, thereby constituting Edwin A. Rogers, rather than Edward L. Dexter, the successful candidate.

With respect to the validity of the ballot containing the words "anyone but", the enclosed Court Order affirms the opinion rendered at your request to the Secretary of State by this office on July 12, 1974. With respect to the validity of the ballot containing the word "no," our July 12 opinion indicated that this ballot presented a question of fact for determination, after recount and appeal, by the Governor and Council, based upon applicable principles of law outlined in detail in our opinion. Our opinion went on to state we believed that a conclusion reached by you and the Council, that the "no" ballot was invalid, could be sustained in Court.

The enclosed Order of Judgment is a final order and may be appealed within 30 days of the entry thereof. Please notify this office if you desire us to prosecute an appeal on your behalf and on behalf of the Executive Council.

Sincerely,

JAL/mf

cc to:

Honorable Harvey Johnson
Joseph T. Edgar,
Secretary of State

JON A. LUND
Attorney General

STATE OF MAINE
FRANKLIN, SS.

SUPERIOR COURT
CIVIL ACTION
Docket No. 74-49

EDWIN A. ROGERS

Vs.

EDWARD L. DEXTER

and

KENNETH M. CURTIS et als

ORDER OF JUDGMENT

The Plaintiff and the Defendant Edward L. Dexter were candidates for the Republican nomination for the 38th District Representative to the Maine Legislature in the primary held on June 11, 1974. As a result of the official tabulation of the ballots cast in the primary election by the Defendant Kenneth M. Curtis, Governor, and the Executive Council, the Defendant received 273 votes and the Plaintiff 272 votes.

The Plaintiff brings this action claiming that 2 ballots counted in favor of the Defendant were invalid and should not have been counted in favor of the Defendant as they bore distinguishing alteration marks upon the ballot sufficient to be identified by the voter.

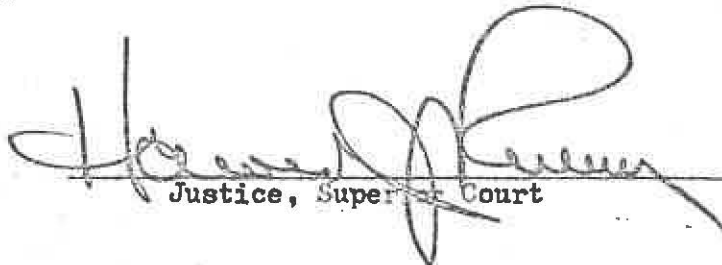
Both alterations involved the nomination for the office of Sheriff. On one ballot the voter had written in below the candidate's name in the space provided for a write-in candidate, the words "Anyone but" and had checked the box opposite the inserted words. On the second ballot, the voter had written the word "No" in large capital letters to the right of the printed name of the candidate for sheriff encompassing both spaces provided for the printed name of the candidate and the open space for a write-in candidate, all within the vertical sidelines of the ballot form.

The parties have stipulated that the only issue in dispute for the Court is the validity of the two disputed ballots, all procedural and other factual matters being in conformity with the law, and there being no question as to the handling of the ballots and the conduct of all parties who have prior hereto handled and reviewed the ballots.

I find both ballots to be invalid and they should not be counted for the Defendant, Edward L. Dexter, as each bears a distinguishing alteration and addition which could identify the individual casting such ballot. In each instance the voter chose to use the ballot as an expression of his opposition to the printed candidate in violation of the law relating to the marking of ballots. The ballot should not be the repository of such propaganda protest by a voter, and in so doing he identifies the special character of that particular ballot and destroys the essence of the secrecy of the ballot.

I therefore order judgment for the Plaintiff on his Complaint and declare the Plaintiff to have received 272 valid votes and the Defendant, Edward L. Dexter, 271 valid votes, thereby constituting the Plaintiff the successful candidate. The Clerk of this Court is hereby ordered to enter judgment for the Plaintiff in accordance with this order and forthwith notify counsel for the parties and the Secretary of the State of Maine.

Dated: October 3, 1974


Justice, Superior Court

A true copy.

Attest:


Glenn Ryan