

MAINE STATE LEGISLATURE

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To Peter M. Damborg, Deputy *JAL* Dept. Secretary of State
From Jon A. Lund, Attorney General Dept. Attorney General
Subject Marking of ballots for candidates in State-wide election

This is a reply to your memorandum of October 29 asking whether the Elections Division of the Secretary of State's Office should allow ballots for candidates seeking election to State-wide offices to be counted if marked on the right-hand side of the ballot at the November 5 General Election. The answer is yes, provided in the judgment of election officials, the mark is not considered to be a distinguishing mark.

The form of the ballot for the General Election is described in 21 M.R.S.A. § 702. With respect to the placement of squares (boxes) on the General Election Ballot, the square must be printed at the left and close to the name of each nominee or write-in space. 21 M.R.S.A. § 702, sub-§ 2, ¶ II. The statutes state "that a voter may designate his choice clearly by a cross or a checkmark" in the square. Ibid. The instructions required to be printed on the General Election Ballot specify that the voter is to make a cross (X) or a checkmark (✓) in the square at the left of the nominee or write-in candidate. 21 M.R.S.A. § 702, sub-§ 2, ¶ C.

Prior to the regular legislative session in 1965, the statutes on the subject of voting required a voter to mark his ballot so that the intersection of the cross or the apex of the checkmark was within the proper square, and if it was not so marked, the ballot was considered defective in law. That provision was repealed in 1965. P.L. 1965, C. 230. In deleting that statutory provision, the Legislature no longer intends that a ballot be considered defective whenever the mark made by the voter is placed in an improper location, provided the intent of the voter is determinable. Presently, a ballot is considered defective only when it contains too many marks or fails to express a definite choice. A ballot is considered void when not prepared in accordance with Title 21 or when it contains a distinguishing mark.

In the event that a voter marks a ballot with either a cross or a checkmark to the right of the name of the nominee or write-in candidate, which mark appears in the space containing the name of the nominee or write-in candidate, the ballot should not necessarily be considered defective for that reason and the vote for that nominee or write-in candidate may be counted, unless in the judgment of the election officials the mark is considered to be a distinguishing mark.