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Steve Wright, Municipal Elections Coordinator — Secretary of State
S. Kirk Studstrup, Assistant — Attorney General

Interpretation of statutory provisions on recount procedures

Your memorandum of October 22, 1976, requested our interpretation of certain statutory provisions concerning the procedure for recount of ballots following an election. The request made special reference to § 1152, sub-§ 8, § 1153, § 1422, § 925, sub-§ 1, and § 1152, sub-§§ 6 and 9 all of Title 21 M.R.S.A. Your specific questions were:

"1. To whom and under what procedures should appeals from recounts be taken?

"2. To whom and under what procedures should challenged and/or disputed ballots be submitted?"

Our answer to the first question is that appeals from recounts should be taken to the Commission on Governmental Ethics and Election Practices (hereinafter "Commission") under the procedures specified in section 1153. Our answer to the second question is that where the validity of ballots is questioned during a recount, the ballots should be submitted to the Commission when a determination of validity is necessary to decide the recount, regardless of whether they are considered "disputed" or "challenged."

It is apparent that your questions have resulted from a basic change in responsibility for determining disputed elections from the Governor and Council to the Commission. The Commission was established by P.L. 1975, chapter 621, effective January 1, 1976. The statutory inconsistencies which have caused your questions are primarily the result of different effective dates for the various statutes dealing with the matter of election recounts. These inconsistencies are of an interim nature, but must be resolved for purposes of the most recent election.

A basic rule of statutory construction is that each statute must be viewed as part of the entire system of which it is a part in order to reach the harmonious result which was intended by the Legislature. Fink v. Maine State Highway Commission, 328 A.2d 791 (Me., 1974). This principle is especially important when the statutes are in pari materia, i.e., dealing with the same subject matter. When two enactments of the same session of the Legislature are in pari materia, one must attempt to interpret the enactments as a harmonious whole in light of the overall legislative purpose expressed by the enactments. If a conflict cannot be resolved in this manner, it is necessary to proceed to other principles of statutory construction, such as the principle of implied repealer. Opinion of the Justices, 311 A.2d 103 (Me., 1973). See also Cram v. Inhabitants of County of Cumberland, 96 A.2d 839 (Me., 1953) on the subject of implied repeal.

Application of the foregoing principles of statutory construction to the statutes involved in your first question makes it clear that an appeal from a recount of the ballots must be taken to the Commission by written application of the candidate making the appeal. The inconsistency in this case results from the fact that the forum to which an appeal should be addressed under § 1153 was changed from the Governor and Council to the Commission, effective January 1, 1976. This amendment was part of P.L. 1975, chapter 621 which established the Commission and reflects the overall legislative policy of transferring post-election procedures from the Governor and Council to the Commission. On the other hand, sub-§ 8 of § 1152, which also concerns appeals after the recount procedure has been completed, presently states that such appeal should be submitted to the Governor and Council. It should be noted that sub-§ 8 has been amended by P.L. 1975, chapter 771 by substituting the Commission for the Governor and Council. However, this amendment being part of the widespread changes necessary as the result of the abolition of the Executive Council, will not become effective under the terms of chapter 771 until January 4, 1977. Since the obvious overall legislative purpose represented by these various enactments is to transfer certain election responsibility from the Governor and Council to the Commission, and since the presently effective amendment of § 1153 must be considered as an implied repeal of sub-§ 8 of § 1152 as presently stated, at least until January 4, 1977, it is our opinion that appeals from recounts of ballots should be submitted by written application to the Commission.

Your second question is phrased in terms of "challenged and/or disputed ballots" both designations being used in the pertinent statutory sections. "Challenged ballots" have been technically defined as those where the eligibility of the voters to cast their votes has been questioned. N. L. R. B. v. A. J. Tower Co., 329 U.S. 324 (1946). "Disputed ballots" have been defined as ". . . ballots that have been considered, but have been rejected or not counted according to law." State ex rel. Shurte v. Murry, 163 N.E. 246 (Mass., 1928). On the other hand, these distinctions have often been blurred. An example of the latter point is found in the Opinion of the Justices, 206 A.2d 541 (Me. 1965) concerning the marking of ballots, where both the House Order presenting the questions and the opinion itself speak in terms of "ballots in dispute" which have been "challenged" by certain candidates. In light of the foregoing and in an attempt to harmonize statutory sections Eke 21 M.R.S.A. §§ 1152 (disputed ballots) and 1422 (challenged ballots) it is our opinion that the Legislature has used these terms interchangeably, at least in those sections concerning appeals of recounts.

We assume for purposes of this opinion that your second question concerns determination of challenged (or disputed) ballots where such determination is necessary as the result of a recount of the ballots. Therefore, it is our opinion that submission of the ballots in question would be to the Commission pursuant to 21 M.R.S.A. § 1422 in the form of an appeal to that body.

The foregoing opinion is given without consideration for the type of election or office or question involved, since your question did not make any differentiation. However, it must be noted that the procedures to be followed in any specific case may be affected by overriding provisions of the State or Federal Constitutions. For example, the final authority for determination of elections to the United States Congress is the appropriate house of Congress. Art. I § 5, United States Constitution. The same is true of elections to the Maine Legislature. Art. IV, Pt. 3, § 3, Constitution of Maine. The differing procedures are generally set forth in 21 M.R.S.A. § 1423. An opinion on any specific election would have to consider the individual factors involved.

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