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Municipalities Annexation By County
The Coast Art 4, Part Third, § 16
Legislation's Effective Date
JOSEPH E. BRENNAN
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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 15, 1976

Honorable Gail Tarr
R.F.D. #1
North High Street
Bridgton, Maine 04009

Dear Representative Tarr:

This letter responds to your request for an opinion of this Office contained in your correspondence of November 25, 1976. It is our understanding that you will propose legislation which would permit the annexation of the Town of Otisfield by Oxford County provided such annexation is approved by the voters of the Town and the County. In this regard, you ask, ". . . whether under the Maine Constitution a referendum can be held on a non-emergency Act before the earliest possible date that Act can become effective, that is, 90 days after the adjournment of the Legislative Session enacting it?" The answer to your question is affirmative.

A question very similar to the one you have asked was addressed by an Opinion of the Justices of the Supreme Judicial Court in 1949. 144 Me. 412 (1949). In that year there was a bill (L.D. 1481) introduced in the Legislature which would have the effect of imposing a personal income tax. The bill was not introduced as an emergency measure and no specific effective date was stated. However, the bill did contain a referendum provision which specified that a special election would be held on the second Monday in June of 1949 for purposes of voting on the question. The provision also stated that if approved, the Act would take effect 90 days after recess of the then current Legislative session. The question which was posed to the Court was whether the Legislature can set a day for a special election for referendum purposes if that day would be within 90 days after the Legislature recessed. In other words, the question was whether the referendum could be held before the date upon which the legislation calling for that referendum would become effective under the provisions of Article IV, Part Third, § 16 of the Constitution of Maine. The Court answered in the affirmative, specifically stating, "The Constitution carries no provision governing the time at which such an election shall be held. That time is left to the judgment and discretion of the Legislature." 144 Me. 412 at 415-416 (1949).

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It should be noted that this Office issued opinions on June 2 and 3, 1959, which infer that a non-emergency act which includes a referendum provision must have become actually effective before the referendum may be presented to the voters. However, these opinions did not cite the Opinion of the Justices noted above, and these prior opinions must be considered revised to the extent that they conflict with that opinion.

One final comment concerns the form of the referendum clause in your proposed legislation. While it is our opinion that a referendum can be held on a non-emergency act before the earliest possible effective date of that act, we do not believe that such referendum could be conducted prior to that date if the bill is enacted with the referendum clause in its present form. Since the present clause states that the act will become effective July 1, 1978, if approved by the Town of Otisfield and Oxford County, there is no problem of a conflict with the Constitution in this regard. However, the referendum clause probably should omit reference to a limited effectiveness for the Act 90 days after adjournment of the Legislature for the purpose of submitting the act to referendum. It may also be advisable to specifically state that the referendum issue may be put to the voters of the Town of Otisfield at the first regular town meeting after approval of the Act or, if this is not practical, at a special town meeting on a specified date. We suggest that you consult with the Legislative Research Office for suggested terminology in this regard.

Please continue to call on this Office if we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

cc: Legislative Research Office