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*Elections: Municipalities, Absentee Ballots, Referendum questions
Municipalities Absentee Ballots, Referendum questions
30 M.R.S.A. 2061 + 2062
21 M.R.S.A. 1252*

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AUGUSTA, MAINE 04333

March 21, 1977

Honorable Barry L. Valentine
State House
Augusta, Maine 04333

Dear Representative Valentine:

This is in regard to your request for an opinion of this office as to whether registered voters of a municipality may vote by absentee ballot on local referendum questions. For the reasons which follow, it is our opinion that Maine Constitutional and Statutory provisions require registered voters of a municipality be afforded the opportunity to vote by absentee ballot on local referendum questions.

The facts upon which this opinion is based are as follows: The Town of York conducted its annual municipal elections on March 5, 1977. Prior to the election the town had apparently accepted 30 M.R.S.A. § 2061, entitled "Secret Ballot", and which contains provisions for referendum questions. The town had also accepted 30 M.R.S.A. § 2062, which provides for absentee voting. The regular ballot prepared for the election contained choices of candidates for office and a referendum question. The absentee ballot prepared for the election contained only the choices of candidates for office. It did not contain the referendum question.

Prior to 1975 § 2062 read that "absentee ballots may be cast at all regular and special elections of town officials. . ." (emphasis added). By P.L. 1975 c. 386 § 1 section 2062 was amended to substitute the term "at all regular and special election at which section 2061 is applicable. . ." (emphasis added), thus indicating an intent to broaden the section to cover referendum questions.

Paragraph 4 of 30 M.R.S.A. § 2061 treats referendum questions at the municipal level:

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"By order of the municipal officers or on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall require that a particular article be placed in the next ballot printed, or shall call a special town meeting for its consideration . . ."

It thus appears that municipal officers can choose whether to place referendum questions on the "next ballot printed" or to call a special town meeting. If, as on the facts presented, the municipal officers choose to place a referendum question on the next ballot, the question must appear on all ballots, including absentee ballots.

This is mandated by paragraph 1 of section 1252, Title 21 (made applicable to municipal elections by 30 M.R.S.A. §§ 2062, 2066):

"an absentee ballot must be identical in all respects to the regular ballots used at an election . . ." ^{1/}

Indeed, 30 M.R.S.A. § 2061, paragraph 5, gives municipalities the option of printing referendum questions on the same ballot as the list of candidates or on a separate ballot, a choice not available in state-wide elections (see 20 M.R.S.A. § 702, paragraph 5).

^{1/} The word "ballot" is used in the statutes being considered to mean the individual pieces of paper upon which an elector registers his choice (i.e., 30 M.R.S.A. § 2061, paragraph 5; 21 M.R.S.A. § 702, paragraphs 5, 6) and also to mean the various pieces of paper which, as a whole, contain "the names of candidates and the offices they are seeking, as well as a listing of the measures . . . to be determined, at an election." (Branton v. State, 214 Ark. 861, 218 S.W. 2d 690, 691). As used in 30 M.R.S.A. § 2061, paragraph 4, and in 21 M.R.S.A. § 1252, paragraph 1, this office deems "ballot" to mean the whole list of candidates to be voted for and questions to be passed upon, and does not mean the separate candidates for office and lists of questions to be determined. (5 Words and Phrases, "Ballot", p. 146, 148)


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The appearance of a referendum question on an absentee ballot would also appear to be required by paragraph 1, 30 M.R.S.A. § 2054, which states that voters qualified to vote at town meetings may vote in the "election of all town officials and in all town affairs." Having accepted the absentee voting provisions, a municipality must provide absentee voters the opportunity to vote on referendum questions or risk denying them the franchise granted by the statute.

If we can be of any further assistance, please let me know.

Very truly yours,


JOSEPH E. BRENNAN
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