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Justices of Peace Nominations
LD 798

LD 798

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AUGUSTA, MAINE 04333

April 26, 1977

Bill Brown
Committee on State Government
Room 427
State House
Augusta, Maine

Dear Bill:

This responds to your letter of April 25, 1977, in which you raise certain questions about prospective enactment of L.D. 798, proposing a constitutional amendment to eliminate the office of Justice of the Peace as a constitutional office. Your questions were as follows:

"Question 1 -- If LD 798 were enacted as drafted and the referendum question were to pass, then will all persons who are justices of the peace on the effective date of the repeal lose their commission on the date of the repeal? In the absence of an effective date specified in the LD, what will be the effected date?"

The removal of the constitutional requirement would simply terminate any constitutional procedure for nominating Justices of the Peace. It would not automatically terminate the commissions of those Justices of the Peace then in existence as the office of Justice of the Peace would not be abolished since provision for the office is also made by statute, 4 M.R.S.A. §1001. Thus, persons who were Justices of the Peace upon the effective date of the constitutional amendment would remain so under the terms of the statute.

There is an effective date specified in the L.D., that being the date upon which the Governor proclaims that the amendment has been adopted by the voters. This could occur at any time after the election and probably would occur no later than January 1, 1978.

"Question 2 -- Which of the following are legally permissible:

- "a. Amend LD 798 to provide an effective date later than the normal effective date for a referendum (April 1, 1978; for example). This would permit the Legislature to pass a statute subsequent to referendum to 'grandfather' justices incumbent on the effective date and to provide for statutorily authorized appointment?"

In response to question 2a, we would advise that it would be appropriate legally to specify an effective date for the constitutional amendment later than the normal effective date for a constitutional resolution. There is ample precedent for this; the most recent being adoption of Chapter 4 of the Constitutional Resolves of 1975 whereby the Executive Council was abolished by a referendum in 1975 but with an effective date of January 4, 1977 specified. Thus, it will be entirely appropriate to specify a later effective date, for example, April 1, 1978, to allow the Legislature time to fill in any gaps in the appointment process left by adoption of the constitutional amendment.

- "b. Amending LD 798 to include statutory authority, to become effective if and when the Constitutional repeal takes place, to 'grandfather' justices incumbent on the effective date and to provide for statutorily authorized appointment?"

As to the question proposed in 2b, I would advise that it would probably not be good form to combine constitutional and statutory amendments in one referendum procedure. Further, in light of the answer to Question 1, we do not believe that such would be necessary. Accordingly, we provide no opinion as to whether such an amendment to L.D. 798 as proposed in question 2b would be constitutional.

I hope this information is helpful.

Sincerely,

DONALD G. ALEXANDER
Deputy Attorney General

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