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Councils Legislative Capacity to Change County Charters

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June 8, 1977

The Honorable Philip Jackson
Senate Chairman
Committee on Local and County Government
State House
Augusta, Maine 04333

The Honorable James Henderson
House Chairman
Committee on Local and County Government
State House
Augusta, Maine 04333

Dear Senator Jackson and Representative Henderson:

This responds to your request for an opinion on the implications of L.D. 1648, legislation relating to county charters. The questions you pose and the brief responses follow:

Question 1: Are the charters of counties incorporated into the Maine Constitution?

Answer: The charters of Maine counties are not incorporated into the Maine Constitution. However, the charters of those counties which existed as of the date of separation from the Commonwealth of Massachusetts are recognized as part of the outstanding law of the State on the date of separation by Section 6 of the Articles of Separation and Article X, Section 3 of the Maine Constitution.

Question 2: If they are so incorporated, may the legislature alter the powers or boundaries of counties without a constitutional amendment?

Answer: The legislature may alter the powers or boundaries of counties without a constitutional amendment.

Question 3: Are county charters included in the terms and conditions of the Articles of Separation in such a manner as to prevent modification or annulment except as provided under Section 1, paragraph ninth of the Articles of Separation?

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Answer: No.

Question 4: Does the first sentence of Section 1, paragraph seven of the Articles of Separation apply to county charters?

Answer: No.

Question 5: What is the present legal effect of county charters?

Answer: County charters have the same legal effect as other legislation, they may be changed by proper legislative enactment. The county charters are the basic enabling document for county government.

Discussion

When Maine was created in 1820, there were several county charters already in existence. Examples of those charters are provided as part of the statement of fact in L.D. 1648. As part of the process of transition to the new State, the Maine Constitution was adopted including Article X, Sections 3, 4 and 5, and, in addition, the Articles of Separation were adopted and made binding upon the activities of the new State. The basic purpose of Sections 3, 4 and 5 of Article X of the Maine Constitution and the Articles of Separation was to preserve the status of law and legal affairs, as nearly as possible, during the transition and avoid the necessity of entirely new enactments of laws. Thus, Section 3 of Article X of the Constitution and Section 6 of the Articles of Separation provided that all laws then in force remain in effect unless inconsistent with the new Constitution or until they are changed by appropriate legislative enactment or expire by their own terms.

The county charters then in existence fell under this category as enactments of the Massachusetts legislature whose effect was being transferred to Maine by the terms of the Articles of Separation. Thus, county charters adopted by the Massachusetts legislature remained in effect until altered by appropriate action of the Maine legislature.

The Maine legislature was not slow to use its authority to change certain powers of counties and county boundaries. For example, in 1822 the legislature changed the authority of County Treasurers relative to that of the State Treasurer, P.L. 1822 Chapter 188. Further, prior to 1860, the legislature engaged in significant reshuffling of county boundaries. For example, creating Waldo County, P.L. 1827 Chapters 354 and 362, Androscoggin County, P.L. 1854 Chapters 60 and 87, Sagadahoc County, P.L. 1854 Chapters 70 and 95, and Knox County, P.L. 1860 Chapters 146 and 181.

All these changes were accomplished by legislative enactment. Thus, the legislature clearly established its capacity to change the authority of counties, create new counties, and shift county boundaries.

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Section 1, Paragraph ninth of the Articles of Separation refers to actions necessary to change the terms and conditions of the Articles of Separation. As county charters are not part of the Articles of Separation, amendment of the terms of the Articles of Separation, and thus compliance of the Massachusetts legislature is not necessary to revise county charters.

Section 1, Part Seventh of the Articles of Separation refers to sales of land and other such binding transactions which had occurred between the State of Massachusetts and either private parties or public bodies relating to property within the jurisdiction of the State of Maine. The Seventh paragraph was meant to ratify those transactions and specify that they could not be altered or abrogated by the State of Maine. Its effect is similar to and mandated by the contracts clause of the United States Constitution Article I, Section 10, also adopted by the State of Maine, Article I, Section 11. This provision (paragraph seventh) was in no way intended to fix legislation enacted as of that date in stone to be only changed by constitutional enactment or concurrence of the Massachusetts legislature. Paragraph seventh did not apply to legislation.

The Maine legislature may alter the powers or boundaries of counties by normal legislative enactment without the necessity of a constitutional amendment or the concurrence of the Massachusetts General Court.

I hope this information is helpful.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB:pm

cc: Senator Thomas M. Mangan