

MAINE STATE LEGISLATURE

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STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

August 8, 1977

To: Markham L. Gartley, Secretary of State

From: Joseph E. Brennan, Attorney General

Re: Form of initiative Ballots

QUESTION:

Does the initiative ballot format which has been proposed by the Secretary of State for the initiative to repeal the uniform property tax comply with the constitution and laws of the State of Maine?

ANSWER:

The initiative ballot format proposed by the Secretary of State represents a reasonable exercise of the Secretary of State's discretion pursuant to Article IV, Part Third, Section 20 of the Maine Constitution. Further, there is no conflict between the format of the initiative ballot and 21 M.R.S.A. § 702(5) (Supp. 1976).

DISCUSSION:

The Secretary of State has proposed the following format for the initiative ballot for the initiative to repeal the uniform property tax to be voted on December 5.

A mark in square I is a vote to repeal the uniform property tax.

A mark in square II is a vote to retain the uniform property tax in its present form.

A mark in square III rejects both I and II and is a vote to return the uniform property tax to the form in which it existed prior to 1977.

Place a cross (x) or a check mark (✓) in the square opposite the question for which you desire to vote.

MARK ONLY ONE SQUARE

YES

I

Shall an initiated bill to repeal the uniform property tax become law?

YES

II

Shall the amendments to the uniform property tax enacted as P.L. 1977 c.48, §§1, 3, &4 and c.109 be approved?

REJECT BOTH

III

Shall both the alternatives above be rejected, so that the uniform property tax will be in effect as last amended by the 107th Legislature?

The Maine Constitution, Article IV, Part Third, Section 18 requires that where an initiative measure is to be presented to the voters together with competing amendments enacted by the legislature, the measures shall be submitted to the voters "in such manner that the people can choose between the competing measures or reject both." The Maine Constitution, Article IV, Part Third, Section 20 also directs that "the Secretary of State shall prepare the ballots in such form as to present the question or questions concisely and intelligibly". The proposed ballot format allows the voters to choose between the competing measures or reject both, further it contains a brief discription of the effect of each vote. Thus the format as proposed represents a reasonable exercise of the discretion placed in the Secretary of State by Article IV, Part Third, Section 20 to prepare the format of initiative ballots.

There remains the question of the effect of 21 M.R.S.A. § 702(5) on the ballot format. Section 702(5) sets forth the manner in which the Secretary of State must prepare general election ballots. Pursuant to subsection 5,

two squares must be printed at the left of any referendam question submitted, with "Yes" above one and "No" above the other, so that a voter may designate his choice clearly by a cross or a check mark.

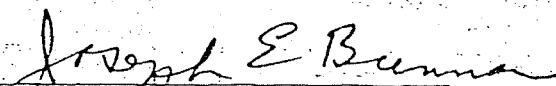
Thus, § 702(5) provides that the ballot must be worded so that the electorate can vote yes or no on each question. The initiative ballot, however, does not permit the electorate to vote yes or no on each question. Rather, the ballot instructs voters to choose one of three alternatives: first, approval of the initiated measure; second, approval of the competing bill; and third, rejection of both the initiated measure and the competing bill. Notwithstanding, the language of § 702(5), this office concludes that the initiative ballot is valid.

Section 702 prescribes the form to be followed by the Secretary of State in preparing ballots for general elections. The term "general election" is defined by Me. Const. Article IV, Part Third, Section 20 as meaning "the November election for choice of presidential electors, Governor and other state and county officers."^{1/} The initiative questions, however, will be voted on at a special election rather than a general election. See Proclamation of

^{1/} 21 M.R.S.A. § 1(14) (1965) defines general election as "the regular election of state and county officials occurring biennially in November."

Governor dated August 4, 1977, and Me. Const. Article IV, Part Third, Section 18. Because § 702(5) only applies to general elections, § 702(5) does not control the form of the initiative ballot.

The form of referendum ballots at special elections is not governed by the Maine statutes.^{2/} However, Me. Const. Article IV, Part Third, Section 20, provides that, unless the Legislature prescribes the form of the questions, "the Secretary of State shall prepare referendum ballots in such form as to present the question or questions concisely and intelligibly." Since the Legislature has not prescribed the form of the questions, and since the ballot prepared by the Secretary of State is both concise and intelligible,^{3/} the Secretary of State has complied with the provisions of § 20.^{3/}


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JEB:jg

2/ 21 M.R.S.A. § 1038(2) and § 1069(5) (Supp. 1976) govern the form of ballots in voting machines and electronic voting systems. Both sections provide that "[a] referendum question must be arranged so that the voter may vote for or against it." The initiative ballot fulfills the requirements of § 1038(2) and § 1069(5), since the electorate can choose between the competing bills or reject both.

3/ It should be noted that even if the initiative question were to be submitted to the electorate at a general election (as is possible under Me. Const. Article IV, Part Third, Section 18), a doubt would exist as to the applicability of § 702(5) to referendum questions containing competing measures. Pursuant to Me. Const. Article IV, Part Third, § 18, the ballot must be arranged in such a manner that "the people can choose between the competing measures or reject both." Further, if no question receives a majority of the votes cast, then the question receiving the most votes will be sent out by itself to another referendum. Because of the difficulty in computing yes-no votes for more than one question, the application of § 702(5) to a referendum involving competing measures might result in a frustration of the will of the voters. However, because § 702(5) only applies to general elections, the issue of whether § 702(5) conflicts with § 18 need not be reached.