Liquor - Election
28 MRSA § 101

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To: Keith H. Ingraham, Director, Bureau of Alcoholic Beverages

From: Phillip M. Kilmister, Assistant Attorney General

Subject: Clarification of Title 28, Section 101

In your memorandum under date of October 5, 1977, submitted to this Office, you have asked three questions relating to the statutory construction of the frequently amended language of 28 M.R.S.A. § 101.

Question 1. What is the proper wording for the first paragraph of Section 101 after October 24, 1977?

Answer: The language as set forth by the terms of c. 496, sec. 39, of P.L. 1977.

Question 2. Which election is to be used to bring forth a local option to the inhabitants of a municipality?

Answer: The annual town meeting or regularly established city election. (see attached opinion of August 24, 1976 in answer to said question.)

Question 3: Which of the two paragraphs relating to the tabulation of votes on local option questions, as set forth by the terms of c. 741, sec. 5 of P.L. of 1975, or by the terms of c. 771, sec. 301 of P.L. of 1975, should be printed in the booklet containing a compilation of our liquor laws?

Answer: The terminology of c. 771, sec. 301 of P.L. of 1975.

In construing statutes, if new provisions cannot be reconciled or harmonized with prior provisions, "the new provisions should prevail as the latest declaration of the legislative will." (Sutherland, Statutory Construction, Vol. 1A, sec. 22.34, p. 196.) This simplistic rule of statutory construction is founded upon the principle, that the legislature is presumed to have knowledge of existing statutory language when it subsequently amends or repeals same.

As noted above, I am enclosing a copy of a previous opinion in answer to your second question.

To amplify the answer to the second question, however, I should emphasize the fact that c. 496, sec. 39, of P.L. of 1977 does not amend or repeal in any manner the language of sec. 3 of c. 296 of P.L. of 1977, the terms of which provide for the conduct of new elections on local option questions in a municipality.

A subsequent or new election on local option questions must meet the prerequisites of c. 292, sec. 3 of P.L. of 1977, which reads as follows:

> "Where a city or town has voted in favor of accepting or not accepting the ballot questions, that vote shall be effective until repealed according to the procedure in the following paragraph.
>
> A new vote may be held in a municipality upon one or more of the ballot questions, upon receipt of a petition of electors resident in that municipality, in writing addressed to the municipal officers and signed by at least 15% of the number of voters voting for the gubernatorial candidates at the last statewide election in that municipality, which petition shall be filed with the municipal officers 120 days prior to any general, primary or special statewide election. The ballots for that municipality shall carry questions in accordance with the petition and shall be prepared by the municipality."

If you have further questions, please do not hesitate to call this Office.

Sincerely,

Phillip M. Kilmister

PHILLIP M. KILMISTER
Assistant Attorney General

STATE OF MAINE 28 MRSA § 101

Inter-Departmental Memorandum Date August 24, 1976

To Keith H. Ingraham, Director Dept. Bureau of Alcoholic Beverages

Fr Phillip M. Kilmister, Assistant Dept. Attorney General

Subject Interpretation of 28 M.R.S.A. § 101

In your memorandum under date of July 30, 1976, you ask in essence whether or not special town meetings may be held to vote on local option liquor questions. The answer to said question is in the negative

Unfortunately, the Legislative Record is silent as to whether or not the Legislature ever intended to allow for the consideration of local option questions through the initiation of petitions which would mandate the holding of elections solely to determine such question

The answer to your inquiry can only be derived from an objective construction of the amended language of 28 M.R.S.A. § 101, and an analysis of the results which flow from interpreting said statutory language.

I believe it would be an unreasonable construction of the language of 28 M.R.S.A. § 101 to conclude that the petition process may be utilized to mandate or dictate that municipal officers must call electio upon the presentment to them of every successive petition. Such a conclusion could lead to a proliferation of town meetings or municipal elections during the course of any year which would render our local option provisions a veritable shambles.

A more reasonable construction of the recently amended language of 28 M.R.S.A. § 101 would be to conclude that although all local option questions must be resolved through the election procedures provid by town meetings or city elections, the initiation of a local option petition must not dictate when an election is to be held.

The applicable language of Section 5 of Chapter 741 of the Public Laws of 1975, effective as of July 29, 1976, provides for the presentmen of petitions for the resolution of local option questions and sets forth outermost and minimum limits of 45 and 30 days respectively, prior to the holding of "the municipal election or town meeting." The annual town meeting or regularly established municipal elections as set forth in the various city charters, are the local option forums envisioned by the Legislature. To hold otherwise, as noted above, would render meaningless the establishment of any time provisions for presentation of petitions, and would render equally meaningless, any reference to local elections, since the institution of a petition, would, ipso facto, dictate that an election be held.

Phillip M. Kilmister

Phillip M. Kilmister
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