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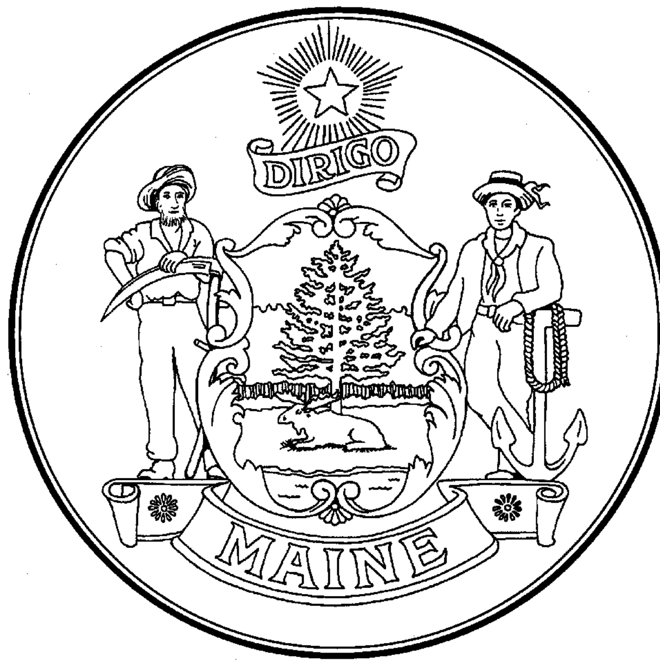



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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

December 8, 1977

To: Markham Gartley, Secretary of State

From: Joseph E. Brennan, Attorney General

Re: District Attorney Nominating Petition Signatures

This responds to your question regarding the proper procedure for collecting signatures on candidate petitions for the office of district attorney.

FACTS:

The 108th Legislature during its first regular session enacted P.L. 1977, c. 425 entitled "An Act to Revise Primary and Nomination Petitions." This law completely revised the petitioning process for both party and non-party candidates. Among other changes, P.L. 1977, c. 425 prescribed specific numbers of signatures necessary for candidates' petitions. The prior law had set the numbers of signatures required on candidate petitions according to a percentage of the votes cast for Governor within candidate's electoral district at the last gubernatorial election.

QUESTION:

What number of signatures is required on the petition of a candidate for the office of district attorney if the electoral division or prosecutorial district encompasses more than one county?

ANSWER:

A primary or nomination petition for the office of district attorney must have at least 150 and not more than 200 signatures. These signatures must be those of registered voters within the electoral division, i.e. prosecutorial district, which is to make the nomination.

REASONING:

P.L. 1973, c. 567 (made effective January 1, 1975, by P.L. 1973, c. 636, sec. 2) repealed and replaced 30 M.R.S.A. sec. 451 substituting the office of district attorney for the office of county attorney. 30 M.R.S.A. section 553-A was also enacted by P.L. 1973, c. 567, establishing eight prosecutorial districts in the State, each to be served by one district attorney. The offices of county and district attorney were and are legislative creatures, existing only by virtue of statute and the Legislature may fix the tenure and prescribe the duties of the office. Watts Det. Agency v. Inhabitants of Sagadahoc County, 137 Me. 233, 18 A.2d 308 (1861). Pursuant to this power, the Legislature when establishing the office of district attorney provided that:

> District attorneys shall be elected and notified, their elections determined and vacancies filled in the same manner . . . . as is provided respecting county commissioners . . . . (30 M.R.S.A. sec. 451)

Both county commissioners and district attorneys are placed under 30 M.R.S.A. c. 1, entitled "County Officers." Like county commissioners, district attorneys have historically been, and continue to be, county officers.

The office of district attorney has been linked to the office of county commissioner by the language of 30 M.R.S.A., section 151 providing that they be elected in the same manner. Both of these offices are county offices, yet neither of these offices serve electoral districts which necessarily coincide with particular county boundaries. County commissioner electoral districts, are apportioned statutorily within the various counties; e.g., sec. 30 M.R.S.A. section 105-A, et seq. Therefore, while they are county officers, they represent an electoral division other than the county. An analogous situation exists with five of the eight district attorneys; i.e., they are county officers representing an electoral division not demarcated by a particular county's boundaries.

Under the petitioning process recently repealed by the 108th Legislature, each candidate for district attorney was required to collect a certain number of signatures based on a percentage of the votes cast for Governor within the electoral division at the previous gubernatorial election. A candidate filing a primary petition for any county office needed signatures numbering between 1 and 2 percent, and a nonparty candidate needed between 3 and 6 percent, of the previous gubernatorial vote. This method of setting the number of signatures required on petitions implicitly mandated more signatures from those candidates from more populous electoral divisions.

The recently enacted legislation, P.L. 1977, c. 425, did not differentiate between county offices, party or nonparty candidates, or the size or mode of delineation of electoral divisions in setting the number of

signatures required on candidate petitions. The law states at 21 M.R.S.A. §§ 445, sub-§ 5,D., and 494, sub-§ 5,E. (establishing the number of signatures required for party and nonparty petitions, respectively) that a petition "for a candidate for county office" must be signed by at least 150 and not more than 200 voters. 21 M.R.S.A., §§ 445, sub-§ 2 and 494, sub-§ 2, both state that petitions

> may be signed only by voters of the electoral division which is to make the nomination . . . .

The Legislature has grouped all county officers into one general category for the purpose of prescribing petitioning requirements. Therefore, regardless of whether a county office is representative of a portion of or more than one county, between 150 and 200 signatures are required for any candidates petition for any county office.

All the signatures collected must be from those voters registered (and enrolled, if a primary petition) within the electoral division to be served by that county office. The signatures for a district attorney candidate's petition may be collected throughout that prosecutorial district.

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

JEB:jg
cc: District Attorneys
Stephen Wright