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GENERAL



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

February 20, 1979

Honorable Darryl N. Brown
House of Representatives
State House
Augusta, Maine 04333

Re: Opinion Request Regarding the Legality of
P. & S.L. 1978, Chapter 94 and Proposed
Legislation to Repeal It.

Dear Representative Brown:

This is in response to your opinion request of February 2, 1979. In particular, you have raised three questions to which I shall respond in the order you have presented them.

Initially, you have inquired about the legality of Chapter 94 of the Private and Special Laws of 1978. Chapter 94, which is entitled, "An Act to Set Off a Portion of Land from the Town of Wales and Annex the Same to the Town of Sabbatus," provides as follows:

"All that part of the Town of Wales lying within the following described lines and boundaries; namely, beginning at a point in the established boundary line between the Town of Sabbatus and the Town of Wales, Androscoggin County, Maine, which point is in the southeasterly line of the Old Gardiner Road, so called; thence, in a general northeasterly direction along the southeasterly line of the Old Gardiner Road a distance of approximately 708 feet to a point; thence, in an easterly direction and parallel with the existing boundary line between the Town of Sabbatus and the Town of Wales a distance of 1,554.2 feet to a point; thence, at a right angle in a southerly direction a distance of 450 feet to the existing boundary line between the Town of Sabbatus and the Town of Wales is hereby set off from the Town of Wales and annexed to the Town of Sabbatus and shall form a part of the Town of Sabbatus."
(effective July 6, 1978)

As you have pointed out, Chapter 94 was enacted without having been submitted to the voters of either the Town of Wales or Sabattus for approval. In view of the fact that Chapter 94 did not receive voter approval, you have asked whether it was legally enacted.

It is well-established in this State that the Legislature alone has the authority to alter the boundaries of towns. As early as 1854, the Supreme Judicial Court stated:

"The boundaries of towns are created by Acts of the Legislature. The inhabitants thereof cannot by direct corporate Acts change these boundaries. . . .

"The Legislature has authority to change the boundaries of towns at pleasure." Ham v. Sawyer, 38 Me. 37, 41 (1854).

Accord: Inhabitants of Fayette v. Inhabitants of Readfield, 132 Me. 328, 329, 170 A. 513 (1934); Shawmut Manufacturing Co. v. Town of Benton, 123 Me. 121, 123, 122 A. 49 (1923); Inhabitants of Eden v. Pineo, 108 Me. 73, 77 (1911).

The State of Maine is divided into "counties, districts, towns, plantations and unorganized territory," (1 M.R.S.A. § 7) and it lies within the sole power of the Legislature to determine in what manner the State will be divided.^{1/} Accordingly, it was not necessary, as a precondition to its enactment, that Chapter 94 of the Private and Special Laws of 1978 receive voter approval from the inhabitants of the Towns of Wales or Sabattus.

Attached to your opinion request is a copy of proposed legislation which would repeal Chapter 94, P. & S.L. 1978. You have inquired whether it would be permissible to introduce the proposed legislation with "an amendment which would require a referendum vote by each of the two towns."

^{1/} 30 M.R.S.A. § 2002 (1978) does provide for a procedure whereby a boundary dispute between towns is submitted to a three-member commission appointed by the Superior Court. However, the sole function of this commission is to determine pre-existing boundary lines, not to establish new ones. See Inhabitants of Fayette v. Inhabitants of Readfield, supra.

While it is within the Legislature's power to create and change boundaries, there would appear to be no legal prohibition against legislative enactment of a particular boundary alteration subject to the approval of the voters in the affected geographical areas.^{2/} This very procedure was employed by the Legislature when it enacted Chapter 87 of the Private and Special Laws of 1973, entitled, "An Act to Annex Town of Brunswick to Sagadahoc County." I have attached a copy of Chapter 87 for your information. As you will observe, this legislation was designed to remove the Town of Brunswick from Cumberland County and annex it to Sagadahoc County. However, Chapter 87 became effective 90 days after the Legislature's adjournment only for the purpose of submitting it to the voters of Brunswick for either acceptance or rejection. Chapter 87 also provided that if the voters of Brunswick approved the Act, it would then be submitted to the voters of Sagadahoc County who would be given an opportunity to either accept or reject it. Chapter 87 also provided that in the event that both the Town of Brunswick and the County of Sagadahoc approved the Act, it would then become finally effective.

In view of the foregoing, we would conclude that the proposed legislation may be introduced with a provision that if the measure is enacted by the Legislature, it will then be submitted to a referendum vote by both of the towns involved.

Finally, you have asked "[i]f the enclosed legislation with a referendum amendment fails, is there any time frame that is required before similar legislation can be submitted?". This question is governed by Article IV, Pt. 3, § 1 of the Maine Constitution and Rule 36 of the Joint Rules of the Maine Legislature. Article IV, Pt. 3, § 1 provides, in relevant part

". . . that the business of the second regular session of the Legislature shall be limited to budgetary matters; legislation in the Governor's call; legislation of an emergency nature admitted by the Legislature; legislation referred to committees for study and report by the Legislature in the first regular session; and legislation presented to the Legislature by written petition of the electors under the provisions of Article IV, Part Thrid, Section 18."

^{2/} Article IV, Pt. 3, §19 of the Maine Constitution sanctions referenda in general. Section 19 provides, in relevant part, that "[t]he Legislature may enact measures expressly conditioned upon the people's ratification by a referendum vote." The referendum procedure mentioned in Article IV, Pt. 3, §19 appears to refer to a statewide referendum. Nevertheless, Article IV, Pt. 3, §19 provides some constitutional authority for the proposition that the Legislature may enact legislation upon the condition that it receive approval from those voters who are residents of a particular local government unit.

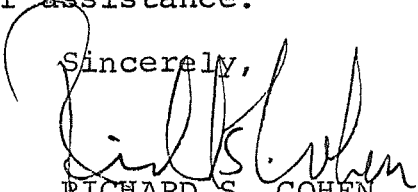
Accordingly, unless a piece of legislation falls within one of the categories specified in Article IV, Pt. 3, § 1, it cannot be introduced or considered by the Legislature during the second regular session. I would also direct your attention to Rule 36 of the Joint Rules, which provides

"No measure which has been introduced and finally rejected in any first regular session shall be introduced at any second regular or any special session of the same Legislature except by vote of two-thirds of both houses."

As we have indicated in the past, the question of whether and when particular legislation may be introduced are matters which are customarily resolved by the Legislature.

I hope this information is helpful. Please feel free to let me know if I may be of further assistance.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC/ec