

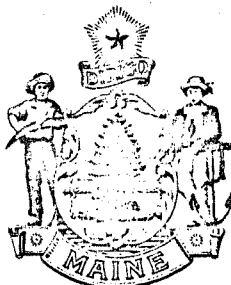
MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

RICHARD S. COHEN
ATTORNEY GENERAL



STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

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

June 5, 1979

H. Sawin Millett, Jr.
Commissioner
Dept. of Educational &
Cultural Services
State House
Augusta, Maine 04333

Re: Petition Filed by Voters of SAD #43 with the State Board
of Education Pursuant to 20 M.R.S.A. §301.

Dear Sawin:

This is in response to your oral request made on behalf of the State Board of Education. Specifically, you have inquired as to whether the State Board has jurisdiction to act upon a petition which has been presented to it by voters of School Administrative District #43. The main issue regarding the petition is that it does not contain a sworn, verification statement made by its circulator. It is the opinion of this office that the State Board does have jurisdiction over the petition even though the petition was not acknowledged by its circulator before an oath taking officer so long as the substance of the petition shall not have misled interested parties as to its purpose.

There is limited case law in the State of Maine dealing with the petition procedures. Those cases, which have been decided by the Law Court, deal with the specific procedures spelled out in either the Constitution (Maine Constitution Article IV, Part 3, Section 18), or in specific statutes. See Opinion of Justices (1951), 114 Me. 557; Opinion of Justices (1917), 116 Me. 557; Opinion of Justices (1927), 126 Me. 620; Opinion of Justices (1934), 132 Me. 523.

An analysis of 20 M.R.S.A. §301, second paragraph, reveals that the procedure prescribed by the Legislature for this type of petition is that the State Board shall,

"upon petition by 10% of the number of voters for the gubernatorial candidate at the last regular election in all of the municipalities comprising the District, make a finding of fact as to whether the representation of the District is apportioned in accordance with this section."

The only requirements set forth in this paragraph is that the State Board receive a petition which has been signed by 10% of a specified class of people. There is

H. Sawin Millett, Jr.

June 5, 1979

Page 2

no requirement in section 301 that the petition be acknowledged by its circulator before submitting it to the State Board. Elsewhere in the Maine Revised Statutes, the Legislature has been specific as to what steps must be adhered to before the receiving body shall have jurisdiction over the petition. See 30 M.R.S.A. §5353; 21 M.R.S.A. §323.2; 21 M.R.S.A. §445.7(A); and Maine Constitution, Article IV, Part 3rd, §18, all of which require the necessary acknowledgment by the circulator. Section 301 does not contain the specific, procedural requirements set forth in the above statutes. It would seem that if the Legislature had intended the petitioners to have to comply with the requirements set forth in the Constitution or in the above enumerated sections of the Maine Revised Statutes, then the Legislature would have specifically required it in §301.

In 1953 the Supreme Court of Minnesota ruled on a question similar to the one which you have raised. It had to interpret the provisions of M.S.A. §122.28, which stated in part that the County Board could dissolve a school district or any other district on a petition signed by a majority of the resident free holders of the district. The Court held that "the mere filing with the County auditor of a petition signed by the requisite number of qualified signers and otherwise conforming to law confers jurisdiction upon the Board of County Commissioners." It further ruled that the petition was not defective "because it was not acknowledged by the signers before an oath taking officer." The Court's reasoning was based on the fact that

"section 122.28 simply provides that a petition for dissolution shall be signed by a majority of the resident free holders. It contains no requirement that the petition be both signed and acknowledged. It is elementary that an acknowledgment is merely evidentiary in its purpose except as it may by statute be made essential to the validity of the instrument or essential to its admissibility in evidence or as a condition for its recording. In the absence of a statutory requirement therefor, a petition for the dissolution of a functioning school district pursuant to §122.28 need not be acknowledged."

In Re Dissolution of School District #33 (Minn., 1953) 60 N.W. 2d, page 60, 66. See State v. Mohr (Iowa, 1924), 199 N.W. 278 and In Re School District #5 of Dodge County (Minn., 1963), 120 N.W. 2d 319. Therefore, the Board has jurisdiction over the petition presented to it relative to S.A.D. #43 so long as the language within the petition is not misleading and the requisite member of voters have signed it.

Respectfully yours,



Waldemar G. Buschmann
Assistant Attorney General

WGB:lm