

MAINE STATE LEGISLATURE

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

July 17, 1979

The Honorable Patrick E. Paradis
State Representative
18 Laurel Street
Augusta, Maine 04330

Dear Representative Paradis:

You have orally requested an opinion from this office regarding the statute authorizing, and setting up a procedure for, amendments to municipal charters, 30 M.R.S.A. sections 1912 et seq. We respond to your specific question as follows:

1. You have asked whether the contents of the documents which you submitted to us are a part of the Maine Statutes. They are. (A copy of the documents which you submitted are, as labelled, copies of 30 M.R.S.A. section 1914, subsections (2) and (3); 30 M.R.S.A. section 1912, subsections (3) and (4); section 1914, subsection (4); 30 M.R.S.A. section 1915, introduction and subsection (2), subsection (3)(B) and subsection (4), introduction and subparagraph (B); and 30 M.R.S.A. section 1916. As regards the submitted copies of sections 1914 and 1916, the struck out portions in these copies are part of the actual statute. (We attach hereto as Exhibit B copies of the statutory provisions cited above in their entirety).

2. You have asked our opinion on the question of whether these sections "take precedence over any local ordinances or local charter provisions." While the question is not entirely free from doubt, our opinion is that the statutory provisions which spell out a procedure for the adoption, revision or amendment of municipal charters would control over ordinances or charter provisions in the same area. This position is based on the well-settled principle that a municipality is a creature of the Legislature and is endowed with only such powers as the Legislature gives it. E.g., State v. Rand, 366 A.2d 183 (Me. 1976); Squires v. City of Augusta, 155 Me. 151 (1959); see also, Maine Constitution, Art. VIII, Pt. 2, section 1.

The Honorable Patrick E. Paradis
Page Two
July 17, 1979

3. You have asked whether the constitutionality of the submitted section has been tested in the courts, and the answer to this question is no.

4. The last answer renders an answer to your fourth question inapplicable.

I trust the above is responsive to your concerns. Please feel free to contact this office if you have further questions.

Sincerely yours,

RICHARD S. COHEN
Attorney General

RSC:ks.

US Const. Art. VI

1914. CHARTER AMENDMENTS, PROCEDURE

2. Alternative method, initiative. On the written petition of a number of voters equal to at least 20% of the number of votes cast in a municipal at the last gubernatorial election, but in no case less than 10, the municipal officers shall by order provide that proposed amendments to the municipal charter be placed on a ballot in accordance with the procedures set out below.

A. Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

B. Alternative statements of a single amendment are prohibited.

3. Petition procedure. The petition forms shall carry the following legend in bold lettering at the top of each form on the face thereof.

Municipality of.....

"Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment of the municipal charter as set out below."

No more than one subject may be included in a petition.

In all other respects the form, content and procedures governing amendment petitions shall be the same as provided for charter revision and adoption petitions under section 1912, including procedures relating to filing, sufficiency and amendments.

1912. PETITION PROCEDURE.

3. Petition procedure. The following procedure shall be used in the alternative method set out in subsection 2. (See above)

A. Any 5 voters of the municipality may file with the municipal clerk an affidavit stating they will constitute the petitioners' committee, circulate the petition and file it in proper form. The affidavit shall

state the names and addresses of the members and specify the address to which all notices to the committee are to be sent.

The petitioners' committee may designate additional voters of the municipality, who are not members of the committee, to circulate the petition.

Promptly after the affidavit is filed, the clerk shall issue petition blanks to the committee.

B. The petition forms shall be printed on paper of uniform size and may consist of as many individual sheets as are reasonably necessary. Petition forms shall be prepared by the municipal clerk at the expense of the municipality.

(1) Petition forms shall carry the following legend in bold lettering at the top of each form on the face thereof. (See 1914 - 3)
Each signature affixed to a petition shall be in ink or other indelible instrument and shall be followed by the place of residence of the voter with street and number, if any. No petition shall contain any party or political designation.

(2) The clerk shall note the date of each petition form issued and all petitions, unless sooner filed, shall become null and void for every purpose on the 120th day after the date of issue.

(3) Each petition form shall have printed on its back an affidavit to be executed by the circulator, stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names they purport to be, that each signer has signed no more than one petition, and that each signer had an opportunity before signing to read the petition.

(4) Petition forms shall be assembled as one instrument and filed at one time with the clerk. The clerk shall note thereon the date of filing.

Procedure after filing. Within 20 days after the petition is filed, the clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective, shall promptly send a copy of the certificate to the petitioners' committee by mail, and shall file a copy with the municipal officers.

A. A petition certified insufficient for lack of the required number of valid signatures may be amended once, if the petitioners' committee files a notice of intention to amend it with the clerk within 2 days after receiving the copy of his certificate.

Within 10 days after the date of filing of the notice of intention, the committee may file a supplementary petition to correct the deficiencies in the original petition. Such supplementary petition shall in form and content comply with the requirements for an original petition under subsection 3.

B. Within 5 days after the filing of a supplementary petition, the clerk shall complete and file a certificate as to its sufficiency in the manner provided for an original petition.

C. When an original or supplementary petition has been certified insufficient, the committee may, within 2 days after receiving the copy of the clerk's certificate, file a request with the municipal officers for review.

The municipal officers shall inspect the petitions in substantially the same form, manner and time as a recount hearing under section 2064 and shall make due certificate thereof, copies of which shall be filed with the municipal clerk and mailed to the committee. The certificate of the municipal officers shall be a final determination of the sufficiency of the petitions.

D. Any petitions finally determined to be insufficient shall become null and void and of no further force or effect. Such petitions shall be stamped void by the clerk and shall be sealed and retained by the clerk in the manner required for secret ballots.

4. Action on petition.

A. Within 10 days of receipt of a report that a petition is sufficient, the municipal officers shall by order provide for a public hearing on the proposed amendment. The notice of the hearing shall be published in a newspaper having general circulation in the municipality at least 7 days prior to the hearing, and shall contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers or a committee appointed by them.

B. Within 7 days after public hearing, the municipal officers or the committee appointed by them shall file with the municipal clerk a report containing the final draft of the proposed amendment and a written opinion by an attorney admitted to the bar of this State that the proposed amendment is not in conflict with the general laws or the Constitution. In the case of a committee report, a copy shall be filed with the municipal officers.

C. On all petitions filed more than 120 days prior to the end of the current municipal year, the municipal officers shall order the proposed amendment to be submitted to the voters at the next regular or special municipal election held within said year after the filing of the final report. If there is no such election to be held before the end of the current municipal year, the municipal officers shall order a special election to be held before the end of the current municipal year for the purposes of voting on the proposed amendment. Unrelated charter amendments shall be submitted to the voters as separate questions. Where the municipal officers, with the advice of an attorney, determine that it is not practical to print the proposed amendment on the ballot and that a summary would not misrepresent the subject matter of the proposed amendment, the municipal officers shall include in the order a summary of the proposed amendment and instruction to the clerk to

include on the ballot the summary in lieu of the text of the proposed amendment.

SUBMISSION TO VOTERS

The method of voting at municipal elections when a question relating to a ~~charter revision~~, a ~~charter adoption~~ or a charter amendment is involved shall be in the manner prescribed for municipal elections under sections 2061 to 2065, even though the municipality has not accepted the provisions of section 2061.

Charter amendment.

In the case of a charter amendment the question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the charter amendment reprinted (summarized) below?"

Voter Information

B. In the case of a charter amendment, at least 2 weeks prior to the date of the election the municipal officers shall cause the proposed amendment and any summary thereof to be printed, shall make copies available to the voters in the clerk's office and shall post the amendment and any summary thereof in the same manner that proposed ordinances are posted.

Effective Date

If a majority of the ballots cast on any question under subsections 1 or 2 favor acceptance, the new charter, ~~charter revision~~ or charter amendment becomes effective as provided below, provided the total number of votes cast for and against the question equals or exceeds 30% of the total votes cast in the municipality at the next previous gubernatorial election.

how many?

B. Charter amendments adopted by the voters shall become effective on the first day of the next succeeding municipal year or on a date

determined by the municipal officers, whichever occurs first.

916. RECORDING

Within 3 days after the results of the election have been declared, the municipal clerk shall prepare and sign triplicate certificates setting forth any charter that has been adopted or revised and any charter amendment approved. One certificate shall be recorded in the office of the Secretary of State, one certificate shall be deposited in the Law and Legislative Reference Library and one certificate shall be deposited in the office of the municipal clerk.

3. **Petition procedure.** The following procedure shall be used in the alternative method set out in subsection 2.

A. Any 5 voters of the municipality may file with the municipal clerk an affidavit stating they will constitute the petitioners' committee, circulate the petition and file it in proper form. The affidavit shall state the names and addresses of the members and specify the address to which all notices to the committee are to be sent.

The petitioners' committee may designate additional voters of the municipality, who are not members of the committee, to circulate the petition.

Promptly after the affidavit is filed, the clerk shall issue petition blanks to the committee.

B. The petition forms shall be printed on paper of uniform size and may consist of as many individual sheets as are reasonably necessary. Petition forms shall be prepared by the municipal clerk at the expense of the municipality.

(1) Petition forms shall carry the following legend in bold lettering at the top of each form on the face thereof.

Municipality of

"Each of the undersigned voters respectfully requests the municipal officers to establish a Charter Commission for the purpose of revising the Municipal Charter or preparing a New Municipal Charter."

Each signature affixed to a petition shall be in ink or other indelible instrument and shall be followed by the place of residence of the voter with street and number, if any. No petition shall contain any party or political designation.

(2) The clerk shall note the date of each petition form issued and all petitions, unless sooner filed, shall become null and void for every purpose on the 120th day after the date of issue.

(3) Each petition form shall have printed on its back an affidavit to be executed by the circulator, stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names they purport to be, that each signer has signed no more than one petition,

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and that each signer had an opportunity before signing to read the petition.

(4) Petition forms shall be assembled as one instrument and filed at one time with the clerk. The clerk shall note thereon the date of filing.

4. Procedure after filing. Within 20 days after the petition is filed, the clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective, shall promptly send a copy of the certificate to the petitioners' committee by mail, and shall file a copy with the municipal officers.

A. A petition certified insufficient for lack of the required number of valid signatures may be amended once, if the petitioners' committee files a notice of intention to amend it with the clerk within 2 days after receiving the copy of his certificate.

Within 10 days after the date of filing of the notice of intention, the committee may file a supplementary petition to correct the deficiencies in the original petition. Such supplementary petition shall in form and content comply with the requirements for an original petition under subsection 3.

B. Within 5 days after the filing of a supplementary petition, the clerk shall complete and file a certificate as to its sufficiency in the manner provided for an original petition.

C. When an original or supplementary petition has been certified insufficient, the committee may, within 2 days after receiving the copy of the clerk's certificate, file a request with the municipal officers for review.

The municipal officers shall inspect the petitions in substantially the same form, manner and time as a recount hearing under section 2064 and shall make due certificate thereof, copies of which shall be filed with the municipal clerk and mailed to the committee. The certificate of the municipal officers shall be a final determination of the sufficiency of the petitions.

D. Any petitions finally determined to be insufficient shall become null and void and of no further force or effect. Such petitions shall be stamped void by the clerk and shall be sealed and retained by the clerk in the manner required for secret ballots.

der the proposed amendment to be placed on a ballot at the next regular municipal election held not less than 30 days after the order is passed; or they may order a special election to be held not less than 30 days from the date of the order for the purpose of voting on the proposed amendments.

A. Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

B. Alternative statements of a single amendment are prohibited.

2. **Alternative method, initiative.** On the written petition of a number of voters equal to at least 20% of the number of votes cast in a municipality at the last gubernatorial election, but in no case less than 10, the municipal officers shall by order provide that proposed amendments to the municipal charter be placed on a ballot in accordance with the procedures set out below.

A. Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

B. Alternative statements of a single amendment are prohibited.

3. **Petition procedure.** The petition forms shall carry the following legend in bold lettering at the top of each form on the face thereof.

Municipality of

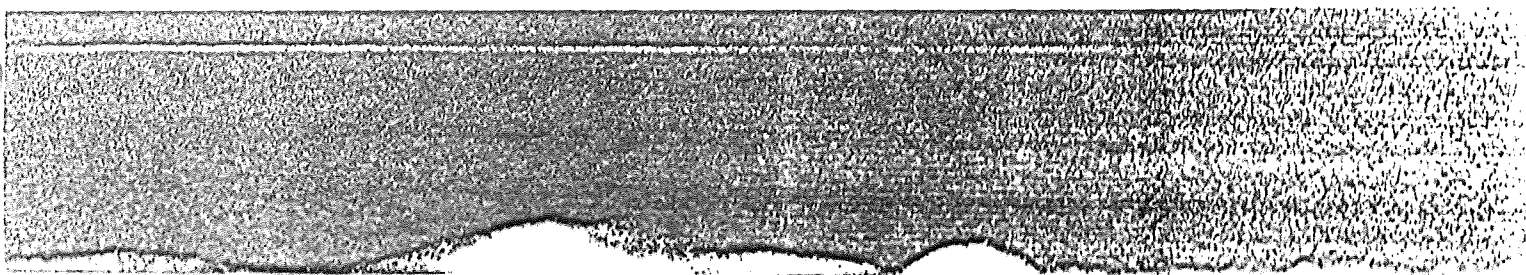
"Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment of the municipal charter as set out below."

No more than one subject may be included in a petition.

In all other respects the form, content and procedures governing amendment petitions shall be the same as provided for charter revision and adoption petitions under section 1912, including procedures relating to filing, sufficiency and amendments.

4. **Action on petition.**

A. Within 10 days of receipt of a report that a petition is sufficient, the municipal officers shall by order provide for a public hearing on the proposed amendment. The notice of the hearing shall be published in a newspaper having general circulation in the municipality at least 7 days prior to the



hearing, and shall contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers or a committee appointed by them.

B. Within 7 days after public hearing, the municipal officers or the committee appointed by them shall file with the municipal clerk a report containing the final draft of the proposed amendment and a written opinion by an attorney admitted to the bar of this State that the proposed amendment is not in conflict with the general laws or the Constitution. In the case of a committee report, a copy shall be filed with the municipal officers.

C. On all petitions filed more than 120 days prior to the end of the current municipal year, the municipal officers shall order the proposed amendment to be submitted to the voters at the next regular or special municipal election held within said year after the filing of the final report. If there is no such election to be held before the end of the current municipal year, the municipal officers shall order a special election to be held before the end of the current municipal year for the purposes of voting on the proposed amendment. Unrelated charter amendments shall be submitted to the voters as separate questions.

Where the municipal officers, with the advice of an attorney, determine that it is not practical to print the proposed amendment on the ballot and that a summary would not misrepresent the subject matter of the proposed amendment, the municipal officers shall include in the order a summary of the proposed amendment and instruction to the clerk to include on the ballot the summary in lieu of the text of the proposed amendment.

1969, c. 563; 1971, c. 362, §§ 1 to 4, eff. May 28, 1971; 1973, c. 304; 1973, c. 388, § 1; 1975, c. 329, § 6.

Historical Note

The first paragraph of subsec. 1, as enacted by Laws 1969, c. 563, read:

"1. Municipal officers. The municipal officers may determine that amendments to the municipal charter are necessary and, by order, provide that such proposed amendments be placed on a ballot at the next regular municipal election held not less than 60 days after such order is passed."

In the first paragraph of subsec. 1, the 1971 Act substituted "30" for

"60" and added "; or they may order a special election to be held not less than 30 days from the date of the order for the purpose of voting on the proposed amendments". Said paragraph was repealed and replaced by Laws 1973, c. 304 and the 1975 Act substituted "should be considered" for "are necessary" in the first sentence.

In par. A of subsecs. 1 and 2, the 1971 amendatory act substituted ", but more than one section of the

charter may be amended as long as it is germane to that subject" for "matter".

In subsec. 3, the 1971 Act repealed and replaced the third sentence, which prior thereto read: "No more than one single proposed amendment may be placed on any petition."

Subsection 4, as enacted by Laws 1969, c. 563, read:

"4. Action on petition

"A. Within 30 days of receipt of a report that a petition is sufficient, the municipal officers shall by order provide for a public hearing on the proposed amendment. The notice of the hearing shall be posted, at least 7 days prior to the hearing, in the same way that ordinances are posted, and shall contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers or a committee appointed by them. The hearing may be adjourned from time to time without further notice.

"B. Within 7 days after final adjournment of the public hearing, the municipal officers or the committee appointed by them shall file with the municipal clerk a report containing the final draft of the proposed amendment and a written opinion by an attorney admitted to the bar of this State that the pro-

posed ordinance is not in conflict with the general laws or the Constitution. In the case of a committee report, a copy shall be filed with the municipal officers.

"C. Upon the filing of the final report, the municipal officers shall order the proposed amendment to be submitted to the voters at the next regular or special municipal election held at least 30 days after the filing of the final report. Unrelated charter amendments shall be submitted to the voters as separate questions."

Subsection 4 was repealed and replaced by the 1971 amendatory act.

Laws 1973, c. 388 repealed and replaced par. C of subsec. 4, which prior thereto read:

"C. Upon the filing of the final report, the municipal officers shall order the proposed amendment to be submitted to the voters at the next regular or special municipal election held not more than 60 days after the filing of the final report. If there is no such election to be held within that time, the municipal officers shall order a special election to be held within that time for the purpose of voting on the proposed amendment. Unrelated charter amendments shall be submitted to the voters as separate questions."

Library References

Municipal Corporations \Leftrightarrow 46.

C.J.S. Municipal Corporations § 88 et seq.

§ 1915. Submission to voters

The method of voting at municipal elections when a question relating to a charter revision, a charter adoption or a charter amendment is involved shall be in the manner prescribed for municipal elections under sections 2061 to 2065, even though the municipality has not accepted the provisions of section 2061.

1. Charter revision or adoption. In the case of a charter revision or a charter adoption the question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the (charter revision) (new charter) recommended by the charter commission?"

2. Charter amendment. In the case of a charter amendment the question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the charter amendment reprinted (summarized) below?"

3. Voter information.

A. In the case of a charter revision or charter adoption, at least 2 weeks prior to the date of the election the municipal officers shall cause the final report of the charter commission to be printed, shall make copies available to the voters in the clerk's office and shall post the report in the same manner that proposed ordinances are posted.

B. In the case of a charter amendment, at least 2 weeks prior to the date of the election the municipal officers shall cause the proposed amendment and any summary thereof to be printed, shall make copies available to the voters in the clerk's office and shall post the amendment and any summary thereof in the same manner that proposed ordinances are posted.

4. Effective date. If a majority of the ballots cast on any question under subsections 1 or 2 favor acceptance, the new charter, charter revision or charter amendment becomes effective as provided below, provided the total number of votes cast for and against the question equals or exceeds 30% of the total votes cast in the municipality at the next previous gubernatorial election.

A. Charter revisions or new charters adopted by the voters shall become effective immediately but only for the purpose of conducting necessary elections, otherwise charter revisions and new charters become effective on the first day of the next succeeding municipal year.

B. Charter amendments adopted by the voters shall become effective on the first day of the next succeeding municipal year or on a date determined by the municipal officers, whichever occurs first.

1969, c. 563; 1971, c. 544, § 104; 1973, c. 388, § 2.

Historical Note

The 1971 Act, in the first sentence of subsec. 4, substituted "subsections" for "subsection" and inserted "or 2".

The 1973 amendatory act repealed and replaced par. B of subsec. 4, which prior thereto read:

"B. Charter amendments adopted by the voters shall become effective immediately."

Library References

Municipal Corporations § 16.

C.J.S. Municipal Corporations § 88 et seq.

§ 1916. Recording

Within 3 days after the results of the election have been declared, the municipal clerk shall prepare and sign triplicate certificates setting forth any charter that has been adopted or revised and any charter amendment approved. One certificate shall be recorded in the office of the Secretary of State, one certificate shall be deposited in the Law and Legislative Reference Library and one certificate shall be deposited in the office of the municipal clerk.

1969, c. 563; 1971, c. 307; 1971, c. 480, § 9; 1971, c. 622, § 96, eff. March 15, 1972.

Historical Note

This section, as enacted by Laws 1969, c. 563, read:

"All charter revisions, new charters and charter amendments shall, within 3 days after the results of the election have been declared, be certified by the clerk and a certified copy thereof forthwith filed in the office of the Secretary of State, a copy deposited in the Law Section of the Maine State Library, and a copy recorded in the municipal clerk's office."

Laws 1971, c. 307 repealed and replaced this section.

Laws 1971, c. 480, without reference to the repeal and replacement by Laws 1971, c. 307, substituted "and Legislative Reference" for "Section of the Maine State".

Laws 1971, c. 622 repealed and replaced this section to consolidate the effects of Laws 1971, cc. 307 and 480.

§ 1917. Ordinance, power limited

Any municipality may, by the adoption, amendment or repeal of ordinances or bylaws, exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution, general law or charter. No change in the composition, mode of election or terms of office of the legislative body, the mayor or the manager of any municipality may be accomplished by bylaw or ordinance.

1969, c. 563.

Law Review Commentaries

Contract zoning: Flexible technique for protecting municipalities. 24 Maine L.Rev. 203 (1972).

Municip.

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