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DEPARTMENT OF THE ATTORNEY GENERAL
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September 27, 1979

Honorable Dana C. Devoe
61 Bennoch Road
Orono, Maine 04473

Dear Senator Devoe:

This will respond to your opinion request, received by this office on September 10, 1979, in which you raise several questions regarding the authority of municipal officers to revise or alter proposed amendments to a municipal charter initiated by the requisite number of voters in the municipality pursuant to 30 M.R.S.A. §1914(2)(1978). Because of time constraints, this response addresses only two of the three questions you have raised. A response to your third inquiry will be forthcoming.

In a special election held in November, 1969, the voters approved the adoption of Article VIII, pt. 2, §1, to the Maine Constitution, which provides:

"The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality may so act."

Pursuant to the second sentence in Article VIII, §1, the First Special Session of the 104th Legislature adopted Chapter 563 of the Public Laws of 1969, enacting 30 M.R.S.A. §§1911-1920. 30 M.R.S.A. §1912 (1978) delineates the procedural mechanism whereby either the municipal officers or the municipal voters may propose the establishment of a charter commission for the purpose of adopting a municipal charter or revising an existing one. Section 1913 governs the composition and duties of the charter commission which is charged with the responsibility of formulating a municipal charter for adoption or revision. 30 M.R.S.A. §1913(6) provides for submission of the proposed new charter or charter revision to the voters. 30 M.R.S.A. §1914 (1978) sets forth the procedures in accordance with which the municipal officers or the electors of the municipality may propose and adopt amendments to the municipal charter. It is this procedure for municipal charter amendments which has generated the questions raised in your opinion

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request. In particular, your opinion request relates to the statutory mechanism whereby a certain percentage of the voters in a municipality may, by written petition, propose amendments to the municipal charter to be placed on a ballot.

30 M.R.S.A. §1914(2) (1978) provides, in pertinent part:

"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...."

Section 1914(3), by reference to 30 M.R.S.A. §1912, requires the amendment petitions to be filed with the municipal clerk who must complete a certificate regarding the sufficiency or insufficiency of the petitions. 30 M.R.S.A. §1912(3)(B)(4) and § 1912(4). The municipal officers themselves are then required to inspect the petitions to determine their sufficiency or lack thereof. 30 M.R.S.A. § 1912(4)(C).

"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." 30 M.R.S.A. §1914(4)(A).

Following, but "[w]ithin 7 days after 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 proposed amendment is not in conflict with the general laws or the Constitution." 30 M.R.S.A. §1914(4)(B).

Finally, with respect to the obligation of the municipal officers to hold an election in connection with the proposed charter amendment,¹ 30 M.R.S.A. §1914(4)(C) provides:

"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

1. The method of voting at an election relating to the adoption of a charter amendment is set forth in 30 M.R.S.A. §1915(2).

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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 purpose of voting on the proposed amendment. Unrelated charter amendments shall be submitted to the voters as separate questions."

Having set forth the specific statutory provisions governing the procedure by which the electors of a municipality may, by petition, propose charter amendments, it is now possible to address your specific questions.

You have asked whether, with respect to a proposed charter amendment, the municipal officers "have any authority to modify it to correct grammatical or typographical errors or to change any of its provisions for simple clarification purposes?" It is my opinion that the municipal officers do have such authority.

Initially, it should be observed that 30 M.R.S.A. §1914 implicitly supports the authority of municipal officers to correct grammatical or clerical errors in proposed charter amendments and to modify the language of the proposed amendment for clarification purposes. 30 M.R.S.A. §1914(4)(B) provides that following the public hearing on the proposed amendment, "the municipal officers or the committee appointed by them shall file...a report containing the final draft of the proposed amendment..." The fact that the municipal officers are required to prepare a "final draft" of the proposed amendment certainly implies that they have the authority to make minor corrections in the language of the proposed amendment. Moreover, the authority of municipal officers to make minor corrections of proposed amendments for the purpose of clarification, is consistent with the provisions of 30 M.R.S.A. §1915(3) regarding voter information.² The obvious purpose of §1915(3) is to provide accurate information to the voters of a municipality regarding a proposed amendment to the municipal charter. Permitting the municipal officers to correct errors and ambiguities in the proposed amendment furthers this salutary purpose. It should also be observed that 30 M.R.S.A. §1914(4)(C) authorizes the municipal officers,

2. 30 M.R.S.A. §1915(3) provides in full:

"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."

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with the advice of an attorney, to summarize the proposed amendment where it is determined that it would be impractical to print the entire amendment and provided that the summary does "not misrepresent the subject matter of the proposed amendment."³ The fact that the municipal officers may, in appropriate cases, summarize a proposed amendment also implicitly supports the conclusion that they may make minor corrections in the proposed amendment for clarification purposes.

Finally, the authority of municipal officers to change the language of a proposed amendment to eliminate clerical errors or other obvious ambiguities, provided there is no modification or alteration of the substance of the proposed amendment, has been consistently upheld by the courts. See, e.g., Barcomb v. Herman, N.H., 358 A.2d 400, 401-02 (1976) State ex rel. Polcyn v. Burkhart, 33 Ohio St. 2d 7, 620.0.2d 202, 292 N.E. 2d 883, 886 (1973). City of Covington v. Reagan, Ky., 284 S.W.2d 323, 324 (1955). Cf. Temporary State Charter Revision Commission v. Board of Elections, 374 N.Y.S. 2d 946, 83 Misc.2d 1029 (1975); Sterling National Bank and Trust Co. v. Charleston Transit Co., 127 W.Va. 42, 27 S.E.2d 256, 262 (1943). See generally, McQuillan, Municipal Corporations, Vol.5, §16.67 at 247 (rev.ed., 1969).

You have also inquired whether, "if the municipal officers conclude that certain provisions of the amendment should be revised from a policy point of view, or are unworkable, do they have authority to modify such provisions or refuse to place the item on the ballot?" It is my opinion that the municipal officers have no such authority.

The municipal officers are not authorized to change the subject matter or the substantive language of a proposed charter amendment. See, e.g., Barcomb v. Herman, N.H., 358 A.2d 400, 401-02 (1976); Anne Arundel County v. McDonough, 277 Md. 271, 354 A.2d 788, 802 (Md.App. 1976); Markus v. Trumbull County Board of Elections, 22 Ohio St.2d 197, 259 N.E.2d 501, 504 (1970). See generally McQuillan, Municipal Corporations §16.67 at 247 (rev.ed., 1969).

3. 30 M.R.S.A. §1914(4)(C) provides in relevant part:

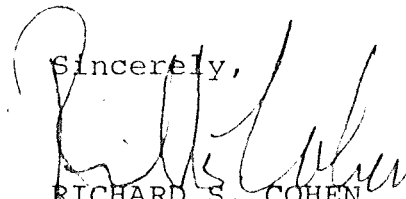
"Where the municipal officers, with the advice of an attorney, determine that it is not practical to print the proposed amendment on the ballot and that a summary would not misrepresent the subject matter of the proposed amendment, the municipal officers shall include in the order a summary of the proposed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

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30 M.R.S.A. §1914(4)(C) imposes a duty upon the municipal officers to submit the proposed amendment to the voters at a regular or special election. 30 M.R.S.A. §1914(4)(C) is set out on pages 2-3, supra. This legal duty to present the proposed amendment to the electorate cannot be avoided merely because the municipal officers consider the proposal to be unwise or unworkable. See, e.g., City of Miami Beach v. Smith, 251 So.2d 290, 293 (Fla.App. 1971); State ex rel. McGovern v. Board of Elections, 53 O.O.2d 147, 24 Ohio Misc. 135, 263 N.E.2d 586 (Ct. of Common Pleas, 1970). To conclude otherwise would permit the municipal officers to exercise a veto power over the right of municipal voters to propose charter amendments through the initiative process.

I hope this information is helpful to you. I anticipate that a response to your remaining question will be available shortly.

Sincerely,



RICHARD S. COHEN
Attorney General

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