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October 9, 1979

Honorable Dana C. Devoe
Maine State Senate
State House
Augusta, Maine 04333

Dear Senator Devoe:

This will respond to your request for an opinion[1] concerning that portion of 30 M.R.S.A. § 1914(4)(B)(1978) which requires the officers of a municipality to obtain and file a written opinion of an attorney that a proposed amendment to a municipal charter "is not in conflict with the general laws or the Constitution."[2] In particular, you have asked the following question:

> "If they [the municipal officers] receive an opinion by an attorney pursuant to 30 M.R.S.A. §1914(4)(B) concluding that certain provisions of the proposed amendment are unconstitutional or in conflict with the general laws, do they have any authority to modify the proposal and then place it on the ballot? Or, in the alternative, do they simply refuse to place the item on the ballot and await for action under 30 M.R.S.A. §1919 by your office or by some other interested party."

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1. Your opinion request was received by this Office on September 10, 1979. In an opinion dated September 27, 1979, we addressed two of the questions raised in your opinion request.

2. As will be discussed in greater detail infra, the requirement of obtaining and filing an attorney's opinion applies only to proposed charter amendments which have been initiated by the voters of a municipality pursuant to 30 M.R.S.A. §1914(2)(1978).

You have orally supplemented your opinion request by asking whether the municipal officers have the authority to modify a proposed amendment or refuse to place it on the ballot should they fail or otherwise be unable to obtain a written opinion from any attorney that the proposed amendment is not in conflict with either the general laws or the Constitution.

30 M.R.S.A. §1914(2)(1978) establishes a procedure whereby a certain percentage of the voters of a municipality may propose amendments to the municipal charter to be placed on the ballot. The petitions requesting that a proposed amendment be placed on the ballot must satisfy the requirements as to form and content, set out in subsection 3 of section 1914. After the petitions have been found to be sufficient, the municipal officers are obligated to give notice of and provide for a public hearing on the proposed amendment. See 30 M.R.S.A. §1914(4)(A). 30 M.R.S.A. §1914(4)(B) then provides:

> "Within 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. In the case of a committee report, a copy shall be filed with the municipal officers." (emphasis supplied).

Subsection (4)(C) of section 1914 mandates the municipal officers to "order the proposed amendment to be submitted to the voters at the next regular or special municipal election."[3]

Initially, it must be acknowledged that the requirement of obtaining an attorney's opinion, embodied in subsection (4)(B), is ambiguous and confusing. The statute provides no guidance as to the extent of the duty imposed upon the municipal officers to obtain the required opinion. For example, it is unclear how many attorneys the municipal officers must approach in attempting to comply with subsection (4)(B). Most significantly, nothing in subsection (4)(B) indicates the consequences of a failure or inability to obtain the required opinion. In short, the statute does not specifically address the question whether the initiative process comes to a halt or whether the proposed amendment must be placed on the ballot notwithstanding the absence of a written opinion

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3. 30 M.R.S.A. §1914(4)(C)(1978) provides, in relevant part:

> "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

stating that it "is not in conflict with the general laws or the Constitution." 30 M.R.S.A. §1914(4)(B)(1978).[4]

As is probably already apparent, the answer to the foregoing question is by no means free from doubt.[5] On the one hand, it is a general rule of statutory construction that a legislative enactment is to be interpreted so as to give effect to every provision of the statute. See, e.g., Camp Walden v. Johnson, 156 Me. 160, 165, 163 A.2d 356 (1960). In attempting to ascertain the Legislature's intent in enacting a statute, the courts will avoid an interpretation which produces absurd or illogical consequences. See, e.g., New England Tel. and Tel.Co. v. Public Utilities Comm'n, Me., 376 A.2d 448, 453 (1977). Moreover, the courts will endeavor to construe a statute so as to avoid rendering it a nullity. Waddell v. Briggs, Me., 381 A.2d 1132, 1135(1978); Goodwin v. Luck, 135 Me. 288, 230, 194 A.305 (1937).

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> 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."

4. The requirement of an attorney's opinion first appeared as part of Chapter 563 of the Public Laws of 1969, being "An Act to Implement the Powers of Municipal Home Rule." As originally enacted, 30 M.R.S.A. §1914(4)(B) provided:

> "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 proposed 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."

Subsection (4)(B) of section 1914 was repealed and replaced by Chapter 362 of the Public Laws of 1971 to read as it presently does. An examination of P.L. 1969, c.563 and P.L. 1971, c.362, reveals no legislative debate regarding the Legislature's intent in enacting subsection (4)(B).

5. We would point out that section 1914(4)(B) only requires the filing of a written opinion that the proposed amendment "is not in conflict with the general laws or the Constitution." (emphasis added). Thus, based upon a literal reading, section 1914(4)(B) would be satisfied even if fifty attorneys concluded that the proposed amendment is unconstitutional or conflicts with the general laws, provided that at least one issued an opinion reaching the opposite result.

On the other hand, the power to propose municipal legislation through the initiative process is entitled to great respect since it involves legislating by direct vote of the electors. See LaFleur ex rel. Anderson v. Frost, 146 Me.270, 80 A.2d 407, 415 (1951). See generally McQuillan, 5 Municipal Corporations §16.48 at 199 (1959, rev.ed). Statutes conferring the initiative power upon the voters of a municipality are liberally construed in favor of the electorate's exercise of that power. See LaFleur ex rel.Anderson v. Frost, supra at 416; Cuprowski v. Jersey City, 101 N.J.Super. 15, 242 A.2d 873, 880 (1968). See generally, McQuillan 5 Municipal Corporations, §16.51 at 203; C. Antieau, 1 Municipal Corporation Law §4.29 at 4-52 (1979). See also 30 M.R.S.A. §1920 (1978).[6] As stated by the Justices of the Supreme Judicial Court, through the initiative process "the people, as sovereign, have retaken unto themselves legislative power and that a particular undertaking by them to exercise that power shall be liberally construed to effectuate the purpose." Opinion of the Justices, Me., 275 A.2d 800, 803 (1971).

The question you have posed in your opinion request is whether the failure or inability to obtain a written opinion from an attorney, in accordance with 30 M.R.S.A. §1914(4)(B)(1978), justifies a refusal by the municipal officers to place a proposed charter amendment on the ballot. To conclude that a proposed amendment must be placed on the ballot, notwithstanding non-compliance with subsection (4)(B), may offend the principle of statutory construction that all legislative enactments be given effect, if at all possible.[7] However, to conclude otherwise would permit the municipal officers to refuse to place a proposed amendment on the ballot, and thereby call a halt to the initiative process, where there is no indication that the Legislature ever intended such a result.

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6. 30 M.R.S.A. §1920 (1978) provides:

> "This chapter, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect the purposes thereof."

7. Although it is speculation on our part, one possible interpretation of section 1914(4)(B) is that the attorney's opinion is designed to serve as a source of information for the voters.

In the absence of a clear legislative statement to the contrary and for the reasons discussed below, it is our opinion that the municipal officers have no authority to refuse to place a proposed amendment on the ballot on the ground that the attorney's opinion referred to in 30 M.R.S.A. §1914(4)(B) has not been obtained.

The primary duty in interpreting a statute is to ascertain and give effect to the Legislature's intent. See, e.g., State v. Hussey, Me., 381 A.2d 665, 666 (1978); Town of Arundel v. Swain, Me., 374 A.2d 317, 319 (1977). Ordinarily, that intent is to be determined by means of the actual statutory language. See State v. Granville, Me., 336 A.2d 861, 863 (1975). However, where the language employed by the Legislature is ambiguous or unclear, resort must be had to other methods of deciphering the legislative intent underlying a statutory enactment. For example, in order to perceive the intent with respect to any particular section of a statute, consideration must be given to all parts of the statute. See, e.g., In Re Belgrade Shores, Inc., Me., 359 A.2d 59, 61-62 (1976); Frost v. Lucey, Me., 231 A.2d 441, 446 (1967). Where a statute has been modelled on another state's statute, it is presumed that the Maine Legislature was aware of that fact. See Foye v. Consolidated Baling Machine Co., Me., 229 A.2d 196 (1967). Finally, a statute will not be interpreted as discarding or overruling long-established principles of law unless the legislative intent to do so is unmistakeable. See Central Maine Power Co. v. Public Utilities Comm'n., Me., 382 A.2d 302 (1978).

An examination of the statutory language now under consideration provides no support for the suggestion that the Legislature intended the initiative process to be terminated merely because the municipal officers were unable to obtain the attorney's opinion referred to in 30 M.R.S.A. §1914(4)(B). Nothing in subsection (4)(C) indicates that the duty of the municipal officers to submit a proposed amendment to the voters at a regular or special election is dependant upon their compliance with subsection (4)(B).[8] Subsection (4)(C) mandates, in clear and explicit terms, that the municipal officers shall submit proposed amendments to the voters at a regular or special election. This direct legislative command to submit proposed

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8. It should be emphasized that it is the responsibility of the municipal officers or their appointed committee, and not the petitioning voters, to obtain and file the attorney's opinion in accordance with section 1914(4)(B). Thus, to an extent, the initiative power of the electorate is subject to the willingness and/or ability of the municipal officers to obtain the required opinion. Furthermore, since the municipal officers may oppose the proposed amendment and since they, generally, employ the municipal attorney, a decision to exclude the initiative from the ballot based on the legal advice of the municipal attorney, might be perceived as a less than neutral decision.

charter amendments to the electorate should be contrasted with the ambiguous language of subsection (4)(B). In view of the well-established principle of liberally construing the right of initiative and of resolving all doubts in favor of its exercise, we are not inclined to interpret 30 M.R.S.A. §1914 (4)(B)(1978) to permit the municipal officers to refuse to place a proposed charter amendment on the ballot on the ground that they are unable or unwilling to locate a private attorney who will author an opinion that it "is not in conflict with the general laws or the Constitution."[9] 30 M.R.S.A. §1914(4)(B)(1978).

As additional support for our conclusion, it should be noted that with respect to judicial review of a charter amendment, 30 M.R.S.A. §1919(3)(1978) provides that "[n]o charter...amendment shall be deemed invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected such...amendment." It would appear that non-compliance with section 1914(4)(B) would not "materially and substantially" affect the adoption of a proposed charter amendment. While section 1919(3) relates to judicial review of a charter amendment, it does suggest that the Legislature did not intend that the failure or inability to obtain the written opinion required by section 1914(4)(B) would justify a refusal, by the municipal officers, to place the proposed amendment on the ballot.

The Maine "Home Rule" statute (30 M.R.S.A. §§1911-1920) was patterned upon the "Home Rule" statute enacted in Massachusetts. See Vol.3, Leg.Rec. at 409 (Senate, January 25, 1970-Statement of Senator Gordon of Cumberland). See also Address of James J. Haag at the Maine Municipal Home Rule Seminar, April 17, 1971, MMA Informational Bulletin, No. 30-71, at 1. Accordingly, an examination of the Massachusetts statute may shed some light on our Legislature's intent in enacting subsection (4)(B). Chapter 43 B, Mass.Gen.Laws Ann. §10, is the Massachusetts counterpart to 30 M.R.S.A. §1914 (1978). Section 10(b) of Chapter 43B permits a specified number of registered voters in either a city or town to propose amendments to the municipal charter. However, section 10(a) provides "that amendments of a city charter may be proposed only with the concurrence of the mayor in every city that has a mayor."[10]

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9. Furthermore, it is the function of the judiciary, not the private bar, to determine the legality of legislation. See Article VI, §1, Me.Const. The voters of a municipality, having sought to exercise their right of initiative, should not be forestalled in the exercise of that right by virtue of the fact that no private attorney will prepare the required opinion.

10. In a town, it is not necessary to obtain the concurrence of the town selectmen on proposed amendments.

After a public hearing on the proposed amendment, section 10(c) provides:

> "Whenever an order proposing a charter amendment to the voters is approved by the mayor and city council or town meeting, a copy of the proposed amendment shall be immediately submitted to the attorney general and to the department of community affairs and such order shall not take effect for four weeks after the date of such submission. Within such four weeks the attorney general shall furnish the city council or board of selectmen with a written opinion setting forth any conflict between the proposed amendment and the constitution and laws of the commonwealth. A copy of the opinion shall at the same time be furnished to the department of community affairs. If the attorney general reports that the proposed amendment conflicts with the constitution or laws of the commonwealth, the order proposing such amendment shall not take effect except as may be specified by further proceedings of the mayor and city council or town meeting under subsection (a). If the attorney general reports no such conflict, such order shall become effective four weeks after its submission to the attorney general."

C.43B, §10(c), Mass.Gen.Laws Ann. (1979 Supp.).[11]

In contrast to subsection (4)(B), the Massachusetts statute specifies what happens in the event that the attorney general concludes that a proposed charter amendment conflicts with the general laws or constitution. In view of the fact that the Maine Legislature was aware of the Massachusetts "Home Rule" statute and, in fact, modelled 30 M.R.S.A. §§1911-1920 on that act, it is reasonable to conclude that the Legislature was also cognizant of the procedure for submitting proposed charter amendments to the attorney general for his written opinion. Chapter 43B, §10(c), Mass.Gen.Laws Ann., clearly states that a proposed amendment is not to be submitted to the voters if the attorney general has determined that it conflicts with the laws or constitution of the state. Given the specificity of Chapter 43B, §10(c), as opposed to the ambiguous language contained in 30 M.R.S.A. §1914(4)(B), it is also reasonable to conclude that the Maine Legislature made a deliberate choice not to follow that portion of the Massachusetts "Home Rule" statute. Such action by the Maine Legislature is indicative of a legislative intent that

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11. It should be observed that, unlike Maine's Home Rule statute, Chapter 43B, §10 requires that all proposed charter amendments be submitted to the attorney general for his written opinion. As noted previously, see note 2 supra, the requirement of obtaining an attorney's opinion pursuant to 30 M.R.S.A. §1914(4)(B) only applies to amendments proposed by the voters through the petition process.

non-compliance with 30 M.R.S.A. §1914(4)(B) does not justify a refusal to submit a proposed amendment to the voters.

Finally, our interpretation of 30 M.R.S.A. §1914(4)(B) is consistent with the general rule of law in other jurisdictions. It has traditionally been held that the authority of municipal officers to interfere with the initiative process by refusing to place a proposal on the ballot is strictly limited. For example, it is generally held that municipal officers may refuse to place a question on the ballot where the initiative petitions are procedurally invalid. See, e.g., Morehead v. Dyer, 518 P.2d 1105, 1107 (Okla.1974); State ex rel.Waltz v. Michell, 124 Ohio St.151, 177 N.E. 214 (1931)(invalid signatures); State ex rel. Poor v. Addison, 132 Ohio St. 477, 9 N.E.2d 148 (1937)(insufficient number of signatures). See generally C. Antieau, 1 Municipal Corporation Law §4.30 at 4-54. On the other hand, it is also well-established that the municipal officers have no authority to refuse to place a question on the ballot simply because they conclude that the proposed question is unconstitutional or otherwise illegal. See, e.g., State ex rel. Polcyn v. Burkhart, 62 O.O. 2d 202, 33 Ohio St.2d 7, 292 N.E.2d 883, 885 (1973); Johnson v. Astoria, 227 Ore.585, 363 P.2d 571 (1961); Mulkey v. Reitman, 64 Cal.Rptr. 881, 413 P.2d 825, 829 (1966), aff'd, 387 U.S. 469 (1967). See generally, McQuillan, 5 Municipal Corporations §16.67 at 247; C. Antieau, 1 Municipal Corporation Law §4.30 at 4-54. The municipal officers have no such authority even if they are acting upon the advice of counsel. See State ex rel. Althouse v. City of Madison, 79 Wis. 2d 97, 255 N.W.2d 449, 458-59(1977). As stated by the Colorado Supreme Court in City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974, 976 (1956):

> "No discretion rests with administrative officials to pass upon the validity of an act proposed by the people. The people in the exercise of their right to vote upon such proposal, wisely adopt or reject it. If they express their sanction and approval of the ordinance by their vote, and its enforcement is attempted by one whose rights are affected, then the courts are open to pass upon the question of its validity."

The Legislature is perfectly free to discard the long-established principle of law referred to above. However, we cannot conclude that the Legislature has done so in the absence of a clear expression of legislative intent to that effect.

The right to propose and vote on municipal charter amendments has been conferred upon the people by the Legislature, and the Legislature may limit or condition that right of initiative in whatever manner it chooses. However, an intent to do so must be clearly expressed. With respect to 30 M.R.S.A. §1914(4)(B), there is no indication, in either the language of the statute or its history, that the Legislature intended that the municipal officers

can refuse to submit a proposed charter amendment to the electorate on the ground that the attorney's opinion referred to in subsection (4)(B) has not been obtained. On the contrary, the evidence indicates that the Legislature had just the opposite intent.[12]

To summarize, we conclude that the municipal officers may not refuse to place a proposed charter amendment on the ballot as a result of their failure or inability to obtain a written opinion from a private attorney that the proposed measure "is not in conflict with the general laws or the Constitution." This conclusion applies even when the municipal officers act in good faith, and the failure to obtain the opinion results solely from the fact that all of the attorneys contacted are of the view that the proposed initiative does conflict with either the general laws or the Constitution.

I hope this information is helpful to you. Please feel free to call upon me if I can be of further assistance.

Sincerely,

RICHARD S. COHEN
Attorney General

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12. In view of the ambiguous nature of 30 M.R.S.A. §1914(4)(B), the Legislature may wish to take action to clarify it.