

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

October 31, 1980

Honorable James K. McMahon
Box 125
Kennebunk, Maine 04043

Dear Representative McMahon:

This will respond to your letter of August 22, 1980 in which you seek our opinion concerning the following question:

"Whether the clerk of a town in York County should disqualify himself from performing election day duties when that clerk is a candidate for election to a county office?"

For the reasons discussed below, we believe the town clerk in question, who is also a candidate for county office, should disqualify himself from performing election day duties.

21 M.R.S.A. §531 (1965-1979 Supp.) provides, in its entirety:

"In a city, the election, term of office, compensation and partial duties of wardens and ward clerks are determined by the city charter. Additional duties are prescribed by this Title. In a town, unless otherwise determined by charter, the clerk of the municipality shall be the supervisor of all elections, shall, with approval of the municipal officers, appoint a warden and may appoint one or more deputy wardens to assist in the duties on election day. The clerk may designate himself or herself as warden or deputy warden but neither the warden nor any deputy warden shall be an officer of a municipal committee of a political party. Deputy wardens shall perform the duties of the warden when necessary and shall not be utilized to replace election clerks prescribed by this Title. The warden and deputy wardens shall be registered voters of the municipality. The clerk may appoint special deputies to help perform his duties on election day. The clerk, warden and deputies shall be paid a reasonable compensation as determined by the municipal officers"

By virtue of 21 M.R.S.A. §531, the town clerk, unless otherwise provided in the town charter, acts as "the supervisor of all elections." In the event that a town's charter alters the general rule stated in 21 M.R.S.A. §531, the charter provisions would be controlling. Consequently, our Opinion is premised upon the assumption that the town in question either does not have a charter or, if it does, the provisions of that charter do not deviate from the general rule stated in section 531.

As "the supervisor of all elections," the town clerk would be responsible for overseeing the wardens, deputy wardens and election clerks, whose functions include sorting and counting ballots and determining the validity of challenged, defective or void ballots. See 21 M.R.S.A. §§532, 832, 924, 925. It seems apparent, therefore, that 21 M.R.S.A. §531 confers upon a town clerk significant responsibilities with respect to the supervision of elections.

Section 533 of Title 21 specifies those persons who "may not serve as election officials." 21 M.R.S.A. §533 (1965-1976 Supp.) provides, in its entirety:

"The following persons may not serve as election officials:

1. An employee of a party or candidate;
2. A person having a direct pecuniary interest in the result of a referendum question;
3. A candidate or his spouse or his mother, father, children, sister or brother. This does not apply unless the relatives mentioned are election officials in the electoral division from which the candidate seeks election.

A. This does not apply to a candidate for warden or ward clerk or his spouse, his mother, father, children, sister or brother.

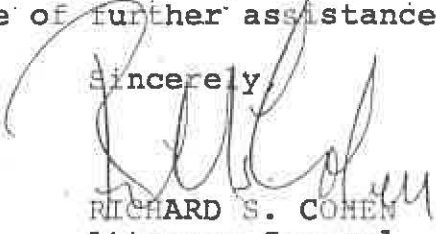
B. This subsection shall not apply to municipalities with a population of less than 500."

Section 533 prohibits a candidate, other than a candidate for warden or ward clerk, from serving as an election official. 21 M.R.S.A. §1(11) provides that the term "election official" includes a warden, ward clerk and election clerk." Since section 1(11) does not expressly state that a town clerk is an "election official," one might argue that 21 M.R.S.A. §533 does not apply to a town clerk. We find such an argument unpersuasive. We do not believe the Legislature intended section 1(11) to represent an exhaustive definition of the term "election official." Unless modified by a town's charter, 21 M.R.S.A. §531 establishes the town clerk as the "supervisor of all elections," with authority, subject to the approval of the municipal officers, to appoint himself or some other persons to act as warden and deputy wardens. We find it highly unlikely that the Legislature, having vested such broad responsibility with the town clerk to supervise all elections, intended that the town clerk would not be an "election official" within the scope and meaning of 21 M.R.S.A. §533. Rather, we believe the Legislature intended that, in the absence of a charter provision to the contrary, the town clerk would be the supervisory election official in all elections. As such, 21 M.R.S.A.

§533 prohibits a town clerk, who is a candidate for office, from serving as an election official.

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

RSC:sm