80-160

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December 23, 1980

Honorable Michael E. Carpenter
1 South Street
Houlton, Maine 04730

Dear Senator Carpenter:

This will respond to your letter of November 23, 1980 in which you seek our opinion concerning the decision of the Houlton Town Council not to place certain proposed changes to the Houlton Town Charter on the November 4, 1980 ballot. For the reasons discussed in greater detail below, it is our opinion that the Town Council utilized the proper legal standard when it decided not to place the proposed changes on the November 4, 1980 ballot.[1]

The Town of Houlton has adopted a town charter in accordance with the provisions of 30 M.R.S.A. §§1912 and 1915 (1978). It is our understanding that in September, 1980 a group of Houlton voters filed petitions with the Town Council seeking to place ten proposed changes to the town charter on the November 4, 1980 ballot. It is also our understanding that these petitions were certified as sufficient pursuant to 30 M.R.S.A.§§1912 and 1914 (1978). In compliance with 30 M.R.S.A. §1914(4)(A)(1978), the Town Council conducted a public hearing on the proposed changes on September 29, 1980, at which time it was decided that

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1. As explained in a subsequent part of this opinion, we limit our inquiry to an interpretation of the relevant state statutes in order to determine the legal principles which govern the application of those statutes. We do not, however, believe it would be appropriate for us to review the application of those principles to the specific charter changes which prompted your opinion request, since such a review would necessarily entail an in-depth interpretation of the municipal charter. See pgs. 4-5, infra.

the proposed changes would be referred to the town attorney for his legal review and opinion.[2]

In a letter dated October 3, 1980 to the Chairman of the Town Council, the town attorney submitted a written opinion in which he concluded that six of the proposed changes were in conflict with the general laws and/or the Constitution of the State of Maine.[3] The town attorney's opinion was premised upon his view that the six proposed changes constituted revisions, not amendments, to the town charter. Since the Legislature has established a specific statutory procedure for the revision of a municipal charter, which is substantially different from the procedure for amending a charter, the town attorney advised the Town Council that those six proposed changes "should not be placed on the ballot."[4] The Town Council agreed with the town attorney's recommendation and declined to place the six proposed changes

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2. Apparently, the proposed changes were referred to the town attorney pursuant to 30 M.R.S.A. §1914(4)(B)(1978) which provides:

> "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."

In an opinion dated October 9, 1979 this Office concluded that the failure or inability of the municipal officers to obtain the attorney's opinion required by section 1914(4)(B) does not justify a refusal to place the proposed amendments on the ballot. As will be explained in greater detail infra, we do not believe that our opinion of October 9, 1979 applies to a situation in which the municipal officers conclude that proposed changes to the municipal charter constitute a "revision" of the charter.

3. With respect to the four remaining proposed changes to the town charter, the town attorney concluded that they were not in conflict with the general laws or the Constitution of Maine and should be placed on the November 4, 1980 ballot.

4. In his opinion to the Houlton Town Council, the town attorney stated:

> "Revision implies substantial change in present charter without any requirement to maintain the present scheme or form of government. On the other hand, amendment implies continuance of the general scheme, form or general plan of government.
>
> It is my opinion that the changes addressed by this petition are changes in the general form of the present government to a town meeting form. This is a revision and can not [sic] be accomplished

on the ballot. It is our understanding that the remaining four proposed changes were placed on the November 4, 1980 ballot.

By virtue of Chapter 563 of the Public Laws of 1969, the 104th Legislature enacted 30 M.R.S.A. §§1911-1920(1978) "to implement the home rule powers granted by the Constitution of the State of Maine, Article VIII-A."[5] 30 M.R.S.A. §1911 (1978). 30 M.R.S.A. §1912(1)(1978) provides that the municipal officers of a town or city "may determine that the revision of the municipal charter should be considered and, by order, provide for the establishment of a charter commission ...." Alternatively, the voters of a municipality may propose the establishment of a charter commission for the purpose of formulating a new municipal charter or revising an existing one. 30 M.R.S.A. §1912(2)(1978) provides:

> "On the written petition of a number of voters equal to at least 20% of the number of votes cast in the municipality at the last gubernatorial election, but in no case less than 10, the municipal officers shall, by order, provide for the establishment of a charter commission for the revision of the municipal charter or for the preparation of a new municipal charter...."

The Legislature has also created a procedure pursuant to which the voters of a municipality may propose amendments to a municipal charter. 30 M.R.S.A. §1914(2)(1978) provides:

> "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."

It is apparent that the Legislature has established two separate and distinct statutory mechanisms by which the voters of a municipality may petition for a revision of or amendments to the municipal charter. With respect to a charter revision, 30 M.R.S.A. §1913 requires the creation of a nine member charter

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> by the amendment-election procedure set forth in Sec. 1914. It must be accomplished by the revision - commission method set forth in Sec. 1912."

5. Article VIII-A of the Maine Constitution has been renumbered as Article VIII, pt. 2, §1 and 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."

commission whose functions consist of the collection of relevant data and the preparation of a charter revision for submission to the voters of the municipality. In the case of charter amendments, the Legislature has provided for a simple procedure to place proposed amendments on the ballot. See 30 M.R.S.A. §§1914(4)(c) and 1915(2)(1978).

The Legislature, however, has not provided a definition of the terms "revision" or "amendment" as used in Maine's home rule statutes. Moreover, our research has not uncovered any decision by the Supreme Judicial Court of Maine addressing this issue. Nevertheless, judicial decisions in other jurisdictions with home rule statutes similar to Maine's recognize a legal distinction between a charter revision and a charter amendment and indicate that the statutory procedures applicable to each must be strictly followed. The leading case in this area appears to be Kelly v.Laing, 259 Mich. 212, 242 N.W. 891, 892 (1932) in which the Michigan Supreme Court stated:

> "'Revision' and 'amendment' have the common characteristics of working changes in the charter, and are sometimes used inexactly, but there is an essential difference between them. Revision implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old. As applied to fundamental law, such as a constitution or charter, it suggests a convention to examine the whole subject and to prepare and submit a new instrument, whether the desired changes from the old be few or many. Amendment implies continuance of the general plan and purport of the law, with corrections to better accomplish its purpose. Basically, revision suggests fundamental change, while amendment is a correction of detail."

See also City and County of Denver v. New York Trust Co., 229 U.S. 123, 143-44 (1913); Moore v. Oklahoma City, 122 Okla.234 254 P.47, 49 (1927); State ex rel. Miller v. Taylor, 22 N.D. 362, 133 N.W. 1046, 1048-49 (1911); Maylender v. Morrison, 260 App. Div. 892, 22 N.Y.S.2d 395 (1940).[6] See generally Maine Townsman at 30 (Nov.1977).

In view of the foregoing, it is apparent that the town attorney correctly recognized the legal distinction between a "charter revision" and a "charter amendment." The question you have asked, however, is "whether or not the 'amendments' ruled off the Nov. 4th ballot were properly defined." For the reasons discussed below, we do not believe it would be appropriate for us to resolve this question.

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6. Following the decision in Maylender v. Morrison, supra, the New York Legislature amended that state's home rule statutes to provide that "[a] proposal presented as a charter amendment shall not be rejected as such on the ground that it constitutes a new charter." See Application of Grenfell, 269 App.Div. 600, 58 N.Y.S. 2d 501 (1943), aff'd, 294 N.Y.610, 63 N.E. 2d 593 (1943); Warden v. Police Department of City of Newburgh, 300 N.Y. 39, 88 N.E.2d 360 (1949).

Obviously, the definitions of "revision" and "amendment" articulated by the courts are general in nature and there is no rigid formula one can employ to determine whether, in any given case, proposed changes to a municipal charter are "revisions" or "amendments." See Moore v. Oklahoma City, supra at 49. An examination of the cases which have confronted this problem reveals that whether proposed changes to a municipal charter are so fundamental so as to be characterized as a "revision", or are merely "corrections" of detail so as to be "amendments," requires a thorough interpretation of the existing charter as well as the impact the proposed changes would have upon it. See, e.g., Boatman v. Waddle, Okla., 264 P.2d 730, 732-33 (1953)(change in form of government from commission form to council-manager form was an amendment, not a revision); State v. City of West Orange, Tex. Civ.App., 300 S.W. 2d 705, 711 (1957)(proposal to adopt commission-city manager form of government was an amendment, not a new charter); Kelly v. Laing, 259 Mich. 212, 242 N.W. 891, 894 (1932)(change from city manager form of government to city Commission form was a revision, not an amendment); Moore v. Oklahoma City, 122 Okla. 234, 254 P.47, 50-51(1927)(change from commission to city-manager form of government was an amendment, not a revision); City of Midland v. Arbury, 38 Mich. App. 771, 197 N.W. 2d 134, 135-36 (1972)("[a] change in the form of government of a home rule city may be made only by revision of the city charter, not by amendment."). We do not believe it is appropriate for this Office to make such a wide-ranging interpretation of the provisions of a municipal charter. As a general rule, our authority to issue advisory opinions is limited to construing state law. 5 M.R.S.A. §195. In our view, the municipal officers, in consultation with the town attorney, are in a far better position than we are to interpret the provisions of the charter which governs their municipality.[7] See, e.g., Shawmut Manufacturing Co. v. Town of Benton, 123 Me. 121, 123, 122 A. 49 (1923); Gladden v. Kansas City, Mo.App., 536 S.W. 2d 478, 480 (1976); Manchester Fire Fighters Assoc. v. City of Manchester, 112 N.H. 343, 295 A.2d 461, 463 (1972); Smith v. City of Alexandria, La. App., 300 So. 2d 561, 565, writs denied, 303 So. 2d 186-87 (1972); Atlantic Oil Co., v. County of Los Angeles, 72 Cal.Rptr. 886, 446 P.2d 1006, 1014 (1968); City of North Miami Beach v. Estes, Fla.App., 214 So.2d 644, 647 (1968); Delbrook Homes, Inc. v. Mayers, 248 Md. 80, 234 A.2d 880, 883 (1967). Accordingly, we intimate no opinion as to whether or not the six proposed changes to the Houlton Town Charter, which were not placed on the November 4, 1980 ballot, were "properly defined" as a "revision" of the municipal charter.

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7. In the event that a sufficient number of voters disagree with the municipal officers' interpretation of the charter and proposed changes to it, they may seek to challenge it through judicial review. See 30 M.R.S.A. §1919 (1978).

Since the municipal officers, acting upon the advice of counsel, concluded that the six proposed changes to the Houlton Town Charter constituted a proposed charter revision, they refused to place the proposals on the November 4, 1980 ballot. In view of the conclusion by the Town Council that the petitioning voters had failed to follow the correct statutory procedure for a charter revision, we believe the municipal officers acted within their authority in declining to place the proposed changes on the ballot. It is a well-established principle of law that the municipal officers may refuse to place matters on the ballot if the petitioning voters have not complied with the procedural requirements mandated by statute. See, e.g., Morehead v. Dyer, Okla., 518 P.2d 1105, 1107 (1974) State ex rel. Waltz v. Michell, 124 Ohio St. 151, 177 N.E. 214 (1931). See generally C. Antieau, 1 Municipal Corporation Law §4.30 at 4-54. The Legislature has established a specific statutory procedure for the revision of a municipal charter. That procedure is significantly more complicated and time-consuming than the procedure governing charter amendments. Compare 30 M.R.S.A. §1913 with 30 M.R.S.A. §1914. The determination by the municipal officers that the six proposed changes in question here constituted a charter revision, justified their decision not to place them on the November 4, 1980 ballot as charter amendments.

Finally, we should point out that we do not believe that our opinion of October 9, 1979 applies to this situation. In that opinion we were not confronted with a dispute as to whether or not a proposed change to a municipal charter was a "charter revision" or a "charter amendment." Rather, we interpreted the specific language of 30 M.R.S.A. §1914(4)(B)(1978) which requires the municipal officers to obtain and file a written opinion from an attorney that a "proposed amendment is not in conflict with the general laws or the Constitution." (emphasis added). We concluded that the municipal officers could not refuse to place a proposed amendment on the ballot simply because they were of the view that, if enacted, it would be unconstitutional or otherwise illegal. To hold otherwise would have permitted the municipal officers to keep a proposed amendment off the ballot and would have left the petitioning voters with no alternative but to seek judicial relief. We did not believe the Legislature intended such a result. In the instant situation, the municipal officers have simply determined that the petitioning voters did not follow the correct procedure for revising a municipal charter. Consequently, the petitioning voters do have a readily available statutory alternative to litigation, namely, submission of a written petition in accordance with the requirements of 30 M.R.S.A. §1912(2)(1978).

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