

# MAINE STATE LEGISLATURE

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*February*

JAMES E. TIERNEY  
ATTORNEY GENERAL



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

February 5, 1981

Donald H. Gerrish  
Town Manager  
Town of Gorham  
270 Main Street  
Gorham, Maine 04038

Dear Mr. Gerrish:

I am writing as a result of a request from some residents of the Town of Gorham that the Department of the Attorney General examine the question of whether they are entitled to petition to amend the Gorham charter so as to allow for the recall of members of the Town Council and Superintending School Committee. Since 30 M.R.S.A. §1919 authorizes the Attorney General to enforce the Home Rule statutes, we felt it appropriate for us to comply with the request.

We understand that the disagreement over the proposed amendment stems from questions as to the legality of the charter changes. Without addressing that issue, I would note that this Department has issued two opinions concluding that as a general proposition a statement from legal counsel that a proposed amendment would violate state law does not justify a refusal to hold a referendum. I am enclosing copies of those opinions for your information.

We have reviewed the Gorham situation in light of our prior opinions, and it is our view that the legally correct course of action would be for the Town to hold a referendum if the petitioners satisfy the signature requirements and other prerequisites of 30 M.R.S.A. §1914. I should emphasize that this would not preclude the Town from subsequently determining that the changes may not be legally implemented. As with a state initiative, if the voters approve the charter changes, the Town officials could then address the issue, with the assistance of counsel, of whether state law prohibits them from abiding by the amendments. If the changes are rejected, then this problem obviously becomes moot. The critical point is that, except in very limited circumstances which we do not believe

exist here, petitioners have a right to invoke the referendum process to amend the charter even when there may be doubt as to the legality of the amendments they are seeking.

In light of the views expressed in this letter, we would request that the Town of Gorham reconsider its position on this matter. If you would like, we would be more than happy to discuss this situation further.

Sincerely,

*Stephen L. Diamond*

STEPHEN L. DIAMOND  
Deputy Attorney General

SLD:ks

Enclosures

cc: Kenneth M. Cole, III, Esq.  
Jensen, Baird, Gardner & Henry