

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

April 22, 1981

Honorable Walter W. Hichens
Maine State Senate
State House
Augusta, Maine 04333

Dear Senator Hichens:

This will respond to your letter of March 25, 1980 in which you seek our opinion as to "whether the name of the town is required after the name of write-in candidates in municipal elections, especially regarding budget committee members."

At the outset we must acknowledge that the answer to your question is not entirely clear. Consequently, we do not believe we can provide a definitive response to your inquiry. Nevertheless, for the reasons discussed below, it is our opinion that in order to properly cast a valid write-in vote in a town election it is not necessary for a voter to include the municipality of residence of the write-in candidate.

Our response to your question begins with an examination of 30 M.R.S.A. §2066 which provides in relevant part:

"Except as otherwise provided by this Title or by charter, the method of voting and the conduct of a municipal election are governed by Title 21."

Section 2066 thus states the general rule that the provisions of Title 21 govern the "method of voting" at a municipal election "except as otherwise provided" by Title 30 or by municipal charter. Accordingly, our attention must first focus on those provisions of Title 21 which pertain to write-in voting.

In 1961 the Legislature enacted a comprehensive revision of the election laws, as part of which a voter was permitted to cast a write-in vote for a person by merely writing the name in the blank space provided at the end of the list of candidates or nominees for the office in question and by placing a cross or check mark in the square adjacent to the blank space. See 21 M.R.S.A. §§921, 922 (1965), as enacted by, P.L. 1961 c.360, §§65, 66. By virtue of Chapter 65, §§20, 21, of the Public Laws of 1971, the Legislature amended sections 921 and 922 of Title 21 to require

a write-in vote to include the municipality of residence of the write-in candidate. For example, 21 M.R.S.A. §921(2) (1980-1981 Supp.), which governs the manner of voting at a primary election, provides in relevant part:

"A voter shall mark his ballot at a primary election with a cross... or a check mark... according to the following provisions:

* * *

2. If he wishes to vote for a person whose name is not on the ballot, he shall write the name and municipality of residence or paste a sticker containing the name and municipality of residence in the blank space provided at the end of the list of candidates for nomination to the office in question with the surname first or last. He shall then place the mark in the square at the left of it."

Section 922(2) of Title 21 contains a virtually identical provision with respect to write-in votes at a general election, with the exception that stickers may not be used to cast a write-in vote at a general election. See also Op. Atty. Gen., September 12, 1980. In 1971, the Legislature also mandated that primary election ballots and general election ballots shall contain instructions indicating that write-in votes "must show the municipality of residence of each write-in candidate." 21 M.R.S.A. §§701(2)(A) and 702(2)(c) (1980-1981 Supp), as amended by, P.L. 1971, c.65, §§17, 18.

Finally, 21 M.R.S.A. §925(2)(D) (1980-1981 Supp.), as amended by, P.L. 1975, c.502, provides:

"2. A ballot held to be defective by the warden or ward clerk shall not be counted for the office, candidate or question affected by the defect, as follows:

* * *

D. If a voter marks a write-in square for an office, but does not write in a name and municipality of residence in the blank space provided to the right of the write-in square, the vote for that office shall not be counted."

If the foregoing provisions of Title 21 apply to town elections, it is apparent that at such elections a voter wishing to cast a write-in vote must include the municipality of residence of the write-in candidate. Consequently, we must determine whether the manner of casting write-in votes at a town election is "otherwise provided" for by Title 30¹

1. In view of 30 M.R.S.A. §2066(1978), it is apparent that a municipality may provide in its charter

We have examined the various provisions of Title 30 and have located only one which appears to address the issue of casting write-in votes in a town election. 30 M.R.S.A. §2061 (5)(B)(1978) provides:

"Ballots, specimen ballots and instructions cards shall be prepared by the clerk according to the following provisions:

* * *

B. At the end of the list of candidates for each office there shall be left as many blank spaces as there are vacancies to be filled, in which a voter may insert the name of any person for whom he desires to vote."

(emphasis added).

On its face, the language of 30 M.R.S.A. §2061(5)(B) does not require a voter to include the name of the municipality of a write-in candidate for a town office. Thus, it is arguable that section 2061(5)(B) provides statutory authority for the proposition that in a town election a write-in vote may be cast and counted for a person without including the person's municipality of residence. This argument finds additional support in the fact that a town election ballot need not include any reference to the municipality of residence of "properly nominated candidates." See 30 M.R.S.A. §2061(5)(A)(1978). Compare 21 M.R.S.A. §§701(2)(B) and 702(1)(1980-1981 Supp). Moreover, unlike 21 M.R.S.A. §§701(2)(A) and 702(2)(c)(1980-1981 Supp.) 30 M.R.S.A. §2061(5)(1978) does not require that a town election ballot contain any instructions indicating that the municipality of residence is a necessary condition to casting a write-in vote. Indeed, nothing in 30 M.R.S.A. §2061(5), which specifies how a town election ballot is to be prepared, indicates that the municipality of residence of any candidate (either nominated or as a write-in) must appear on the

for the method of voting for a write-in candidate. In the event that a municipality has chosen to regulate write-in voting for a town office by charter provision, the terms of the charter would be controlling. Cf. Op. Atty. Gen., October 31, 1980. Consequently, this 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 address the issue of write-in votes.

ballot. Similarly, 30 M.R.S.A. §2061(6), which requires the posting of specimen ballots "[a]t least 4 days prior to the election...", only requires that the specimen ballot contain "the name and office designation of each candidate." Thus, with respect to town elections, the Legislature has not shown the same concern with the need to include a candidate's municipality of residence on the ballot as it has with respect to elections for federal, state and county offices. In view of the foregoing, we believe a reasonable argument can be made that 30 M.R.S.A. §2061(5) (1978) "otherwise provides" for the casting of write-in votes at a municipal election such that the provisions of Title 21 do not apply. See 30 M.R.S.A. §2066 (1978).

On the other hand, we are not unaware of the fact that 30 M.R.S.A. §2061(5)(B) (1978) is susceptible of a contrary interpretation. It is possible to construe section 2061(5) in its entirety as merely providing guidance to town clerks in the preparation of "[b]allots, specimen ballots and instruction cards...." For example, nothing in section 2061(5) explicitly purports to delineate the manner in which votes, including write-in votes, in a town election are to be cast. In our view, 30 M.R.S.A. §2061(5)(B) can reasonably be interpreted as merely requiring that ballots for a town election contain a sufficient number of blank spaces in which a voter may insert the name of a write-in candidate. In other words, subsection (5)(B) can be construed as requiring town election ballots to be prepared so as to permit voters to cast a write-in vote, not as specifying the manner in which such a write-in vote may be properly cast. This argument finds support in the language of 30 M.R.S.A. §2061(5)(I) (1980-1981 Supp.) which provides:

"I. Instruction cards containing the substance of Title 21, sections 861 to 863, 891, 892, 921, 923, 1579 and 1580, to guide voters in obtaining and marking ballots and to inform them of penalties for improper conduct shall be printed."

(emphasis added). Thus, subsection (5)(I) specifically refers to 21 M.R.S.A. §921 which, as noted earlier, has been amended to require the inclusion of a write-in candidate's municipality of residence. In this regard, however, we would note that 30 M.R.S.A. §2061(5)(I) was in existence when 21 M.R.S.A. §921 merely required a write-in vote to include the candidate's name. Until 1971, the language of 21 M.R.S.A. §921 and 30 M.R.S.A. §2061(5)(B) was entirely consistent. Consequently, we are reluctant to view the continued reference to 21 M.R.S.A. §921 in 30 M.R.S.A. §2061(5)(I), as evidence that the Legislature intended P.L. 1971, c.65, §20 to apply to municipal elections, particularly since the language of 30 M.R.S.A. §2061(5)(B) has been left intact. Moreover, we have examined the legislative history of P.L. 1971, c.65, as well as P.L. 1975, c. 502 (amending 21 M.R.S.A. §925(2)(D)), and have found no evidence to indicate whether the Legislature contemplated those statutory enactments to apply to town elections.

As we noted at the outset of this opinion, and as is probably apparent from the foregoing discussion, we are uncertain as to

the correct interpretation of 30 M.R.S.A. §2061(5)(B) and, consequently, are unable to provide a definitive response to your inquiry. Nevertheless, we are also cognizant of the fact that the subject-matter of your inquiry relates to an issue of fundamental importance, involving, as it does, the right of an individual to vote for the person of his choice. Cf. Opinion of the Justices, Me., 369 A.2d 233, 245 (1977); Libby v. English, 110 Me. 449, 86 A.975 (1913). Given the ambiguous nature of 30 M.R.S.A. §2061(5)(B), and bearing in mind the important interests at stake, we believe we should adopt that interpretation of section 2061(5)(B) which, if reasonably possible, avoids imposing an additional requirement upon a voter's ability to cast his vote for the person of his choice. We believe this conclusion is consistent with the general rule of statutory construction that, in the absence of evidence indicating a legislative intent otherwise, laws prescribing the procedure by which a ballot is to be cast should be given an interpretation favoring the voter. See generally, C. Sands, 3 Statutes and Statutory Construction, §71.15 at 366 (4th ed., 1974). Accordingly, while we cannot provide a definitive answer to your question, it is our opinion that pursuant to 30 M.R.S.A. §2061(5)(B) a person may cast a write-in vote in a town election by simply inserting the name of the candidate for whom he wishes to vote and by making a cross or check mark in the square to the left. Stated in a slightly different manner, we conclude that the provisions of Title 21 requiring a write-in vote to include the candidate's municipality of residence do not apply to town elections because 30 M.R.S.A. §2061(5)(B) "otherwise provide[s]." See 30 M.R.S.A. §2066(1978).²

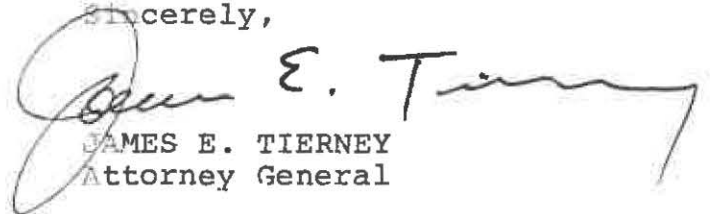
Finally, in your letter of March 25, 1981 you have made specific reference to casting write-in votes for "budget committee members." Initially, it should be observed that a budget committee may be established "by town meeting vote or charter provision." 30 M.R.S.A. §2061(4)(1978). Thus, a town is free to decide (1) whether it wishes to establish a budget committee and (2) how the members of that committee are to be selected. In the event that a

2. We should also point out that it is our understanding that the purpose of requiring a write-in vote to include the candidate's municipality of residence is to facilitate the identification of the candidate. In the context of a town election, it would appear that the difficulty in identifying write-in candidates is far less significant than is likely to arise in the context of an election for federal, state and county offices.

town decides, either by town meeting vote or by charter provision, to provide for the election of budget committee members by ballot, our conclusion that 30 M.R.S.A. §2061 (5)(B) governs the method of casting write-in votes applies with equal force to such an election. Of course, the town may provide for the appointment of budget committee members.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "James E. Tierney". The signature is written in dark ink and is positioned above the typed name and title.

JAMES E. TIERNEY
Attorney General

JET:sm