

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

October 14, 1981

Elliott L. Foss
Town Manager
Town Office
Milbridge, Maine 04655

Dear Mr. Foss:

Senator Larry Brown has asked that I respond to two questions you have posed with respect to the referendum vote on the authorization of a water district for the Town of Milbridge. It is my understanding that an election was held on September 28, 1981, at which a majority of those voting approved the creation of the district.

Your questions may be summarized as follows:

1. In light of the fact that the total number of votes cast at the September 28 election did not equal or exceed 20% of the total number of names on the check list of voters of the district, may the election be treated as meeting the statutory requirements for voter approval of the district?

2. If the September 28 election did not satisfy the statutory requirements for approval of the district, may a subsequent referendum be held after November 1, 1981?

It is my opinion that the September 28 referendum did not suffice to approve the creation of the district but that a subsequent election may be held after November 1, 1981.

At its First Regular Session, the 110th Legislature enacted P. & S.L. 1981, c. 55 which established "a body politic and corporate under the name of 'Milbridge Water District.'" Pursuant to section 14 of chapter 55, however, the Act takes effect only if approved by the voters of the district. The language in section 14 which gives rise to your questions is set out below.

Sec. 14. Referendum; effective date. This Act shall take effect when approved only for the purpose of permitting its submission to the legal voters of the district at a special election or elections called and held for the purpose. . . . [T]he date of the election shall be determined by the municipal officers, but the first such meeting of the town shall not be later than the first day of November, 1981. . . .

. . . This Act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters of the district voting at the election, but only if the total number of votes cast for and against the acceptance of this Act in the special election equals or exceeds 20% of the total number of names on the check list of voters of the district provided herein, which check list shall be used at the election; but failure of approval by the necessary majority or percentage of voters shall not prevent subsequent elections.

With respect to your first inquiry, the Act clearly requires that for a vote accepting the district to be binding, the total number of votes cast for and against acceptance must equal or exceed 20% of the total number of names on the check list of voters of the district. Since you have indicated that the total vote at the September 28 election fell short of the 20% requirement, that election cannot be treated as constituting acceptance of the Act.

As a result of the failure to achieve the necessary percentage of voters at the first election, the Town wishes to conduct a second referendum. While this procedure is expressly authorized by section 14, a question has been raised about the date for this election presumably because of the statutory mandate that "the first such meeting of the town shall not be later than the first day of November, 1981." In my view, the quoted language simply means that the first election must be held prior to November 1, a requirement which has already been met. There is nothing in section 14 which would prohibit the scheduling of a subsequent referendum after that date. The fact that the Legislature expressly limited the deadline to the first meeting or election indicates that this restriction on scheduling was not intended to apply to subsequent referenda.

I hope this information is helpful.

Sincerely,

Stephen L. Diamond
STEPHEN L. DIAMOND
Deputy Attorney General

SLD/ec

cc: Hon. Larry Brown