

MAINE STATE LEGISLATURE

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

February 4, 1982

Honorable Cecil O. Lancaster
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Lancaster:

You have requested an opinion from this office regarding the effect of P.L. 1981, c. 447 on water districts established prior to January 1, 1982. More specifically, you have asked whether Chapter 447 requires that pre-1982 water districts follow the nomination and election practices of the municipality or municipalities in which they are located or which they serve and whether all of the registered voters of these municipalities may vote to elect the trustees. Your third question is whether the municipal officers may amend the recommendation for compensation submitted to them by water district trustees, under 35 M.R.S.A. § 3223(4).

Section 3223(2) of Title 35, as enacted by Chapter 447, provides as follows:

Nominations and elections [of water district trustees] shall be conducted in accordance with the laws relating to municipal elections. . . .

Your first question, whether this subsection compels a pre-1982 district to adopt nomination and election procedures which are the same as those used in the municipality or municipalities served by the district or in which the district is

located, must be answered in the negative.^{1/} The language of subsection 2 clearly does not compel this result. It is more reasonably viewed as giving a water district the same choices as a municipality in establishing a nomination and election procedure. See generally 30 M.R.S.A. §§ 2051-67. There are additional difficulties in applying a contrary interpretation. For example, if a district either covers or serves more than one municipality, and if those municipalities have different methods of nomination and election, there is no way of determining which method should be applied to the district under such an interpretation. Moreover, under § 3223(2), it is probable that a water district will adopt municipal election methods in a piecemeal fashion, if at all, since the district's charter will control where it speaks, and the statute will only apply where the charter is silent. See Opinion of the Attorney General, January 29, 1982. This probability negates any argument that nomination and election practices of a municipality automatically apply to the pre-1982 water district which is located within or which serves that municipality.

Your second question is whether § 3223(2) mandates that all qualified voters of municipalities served by a water district be allowed to vote for the district's trustees, rather than just the voters residing within the geographical boundaries of the district itself. We answer in the negative. To our knowledge, every water district charter specifically establishes a class of persons entitled to vote for its trustees, usually the registered voters residing within the district. Since such charter provisions for pre-1982 districts would continue in effect, it follows that § 3223(2) does not provide for any change in the electorate. Even if this were not the case, however, there is nothing in the specific language of § 3223(2) which evidences any legislative intent to enlarge the class of those eligible to vote for water district trustees.

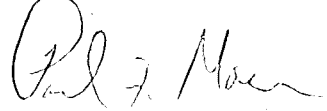
Your third question is whether under 35 M.R.S.A. § 3223(4), which provides that the compensation of water district trustees is to be "recommended" by the trustees themselves and "approved" by the municipal officers, the municipal officers may amend the trustees' recommendation. We answer in the affirmative. The

^{1/} Our answer to this question assumes that the charter of the district is silent on the question of election procedures. As stated in an earlier opinion, the charters of pre-1982 water districts control in areas where they speak (with two exceptions not relevant here). Where they are silent, the provisions of Chapter 447 apply. Opinion of the Attorney General, January 29, 1982.

language of the statute clearly contemplates a process in which the municipal officers have the final word on the trustees' salary. Moreover, it is well settled in the law that the word "recommend" as used in a statute implies advisory, and not binding, action. E.g., In re Hogan's Estate, 259 Iowa 887, 146 N.W.2d 257, 259-60 (1966), and cases cited therein. We therefore conclude that the trustee's recommendations are not binding on the municipal officers in setting the trustees' compensation.

We hope this information addresses your concerns. If you have any further questions, please feel free to contact this office.

Very truly yours,



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