

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

August 19, 1983

The Honorable Rodney S. Quinn
Secretary of State
State House
Augusta, Maine 04333

Dear Secretary Quinn:

This will respond to the inquiry to Deputy Secretary of State James S. Henderson as to whether a registrar, in the process of updating the voting list to remove the names of those who have died, moved, or otherwise become disqualified to vote, pursuant to 21 M.R.S.A. § 171(2) (Supp. 1982), may remove the names of registered voters who have not voted in recent elections, after sending them a notice, pursuant to 21 M.R.S.A. § 172(1) (Supp. 1982). Although Maine's election laws neither explicitly permit nor forbid such conduct, it is the Opinion of this Department that a registrar may not remove registered voters from the voting list solely because they did not participate in recent elections, although the registrar may utilize voting inactivity, in conjunction with other factors, in proceeding within the current statutory framework to update the voting list.

I

In 1982, the registrar of one town in Maine targeted for removal from its list of registered voters all persons who had not voted in

recent elections.^{1/} These voters received a notice stating that their names had been removed because of previous inactivity at elections, and that their failure to respond within thirty days would indicate their agreement with this action. Approximately two thousand names were deleted by this process.^{2/} The issue presented is whether this procedure violated Maine's election laws.^{3/}

II

Maine registrars are delegated certain powers and responsibilities by statute. See 21 M.R.S.A. §§ 101-102, 171-175 (Supp. 1982). Specifically, the registrar is given "exclusive power to prepare and revise the voting list." 21 M.R.S.A. § 171 (Supp. 1982). Concurrent with this authority is the registrar's responsibility to update the list:

[T]he Registrar shall keep a list current at all times by adding the names of new voters and by removing the names of those who have died, moved from their municipality with an apparent intention to abandon their residences therein, or become disqualified to vote.

^{1/} This Department's understanding of the underlying facts is derived solely from the opinion request, and therefore, it is not known how many recent elections were considered by the registrar in deciding to remove voters from the voting list. In light of this Department's resolution of the issue, see Part II infra, this fact is not material.

^{2/} Prior to the November 1982 election, numerous people, some of whom had been targeted for removal, complained about the procedure, and all two thousand names were restored temporarily to the voting lists.

^{3/} This Department does not believe that the periodic removal of inactive voters from voting lists would violate the Equal Protection Clauses of either the United States or Maine Constitutions. Applying a "rational relationship" test, several courts have held that the registrar may remove inactive voters from the voting lists as a "legitimate means of effectuating the State's interest in the purification of its electoral system." Citizens Committee to Remove Jack Williams v. Marston, 109 Ariz. 188, 191, 507 P.2d 113, 116 (1973), citing, McDonald v. Board of Election Commissioners in Chicago, 354 U.S. 802, 809 (1969); Johnson v. Munster, (D.Ariz. Nov. 17, 1970), summarily aff'd, 401 U.S. 968 (1971).

21 M.R.S.A. § 171(2) (Supp. 1982). Each individual whose name is removed from the voting list must receive notification of the registrar's action. 21 M.R.S.A. § 172 (Supp. 1982).^{4/} The question, therefore, is whether the statute requiring the registrar to update the voting list permits the registrar to remove the names of voters who had not participated in previous recent elections after they had been sent appropriate notice.

The starting point for statutory interpretation is the language of the statute. Cummings v. Town of Oakland, 430 A.2d 825, 829 (Me. 1981), cert. denied, 454 U.S. 1134 (1982); Mundy v. Simmons, 424 A.2d 135, 137 (Me. 1980). Moreover, the plain language of the statute ordinarily will control, see Paradis v. Webber Hospital, 409 A.2d 672, 675 (Me. 1979), and "[w]here the statutory language is plain and unambiguous, there is no occasion for resort to rules of statutory interpretation to seek or impose another meaning." Central Maine Power Co. v. Public Utilities Commission, 405 A.2d 153, 159 (Me. 1979) (citations omitted).

Because the statute only delegates authority to the registrar to remove registered voters from the voting list under three circumstances, and because those three circumstances do not include the failure to vote, the registrar lacks statutory authority to remove the voter from the voting list solely because that person has not voted recently and did not respond to a notice sent by the registrar.

This interpretation applies the ordinary language of the statute, and treats the terms of the statute as exclusive instead of illustrative.^{5/} This is consistent with the Law Court's direction in interpreting election laws: "The object of elections is to ascertain the popular will, and not thwart it. The object of election laws is to secure the rights of duly qualified voters and not to deter them." Opinion of the Justices 152 Me. 219, 226-27, 130 A.2d 526, 530 (1956) (citation omitted). Cf. Allen v. Quinn, 459 A.2d 1098, 1102 (Me. 1983) ("Constitutional provisions are accorded a liberal interpretation" when facilitating participatory democracy).

^{4/} Pursuant to 21 M.R.S.A. § 172(1) (Supp. 1982), the notice must contain the following message: "This is to advise you that your name has been removed from the voting list of (name of municipality) for the following reasons: (Here state reason for removal)... Your failure to reply within 30 days will be deemed to indicate your agreement with this action."

^{5/} "The maxim--expressio unius est exclusio alterius [the expression of one thing is the exclusion of another]--is well recognized in Maine as in other states." Carson v. Town of Oakland, 442 A.2d 170, 171 (Me. 1982), quoting Wescott v. Allstate Ins. Co., 397 A.2d 156, 169 (Me. 1979).

Accordingly, a registrar may remove only the names of those voters who have died, moved, or otherwise become ineligible to vote, pursuant to 21 M.R.S.A. § 171(2) (Supp. 1982).

III

Although the registrar may not remove a registered voter from the voting list solely because he or she has not voted recently, that does not mean, however, that voting inactivity is irrelevant to the registrar's responsibility to update the voting list. Indeed, voting inactivity may indicate that the voter has "moved from the municipality with an apparent intention to abandon [his or her] residence therein." 21 M.R.S.A. § 171(2) (Supp. 1982).^{6/} Accordingly, the registrar may use the fact of voting inactivity, in conjunction with other facts, to update the voting list.

The registrar, for example, could compile a list of inactive voters, and compare that list with the list maintained by the United States Postal Commission of persons who have filed change of address forms with the postmaster.^{7/} The registrar could then remove the names of those persons who appear on both lists from the voting list, providing that the notice requirements of 21 M.R.S.A. § 172(1) (Supp. 1982) have been satisfied.^{8/} See note 4 supra.

In sum, the registrar may consider voting inactivity in updating the voting list, pursuant to 21 M.R.S.A. § 171(2) (Supp. 1982). The registrar, however, may not remove a registered voter from the voting list solely because of voting inactivity.

^{6/} Although it may also indicate that the voter has died, that is less likely because the town clerk is required to provide the registrar with names of all persons who have died in the town. 21 M.R.S.A. § 171(3) (Supp. 1982).

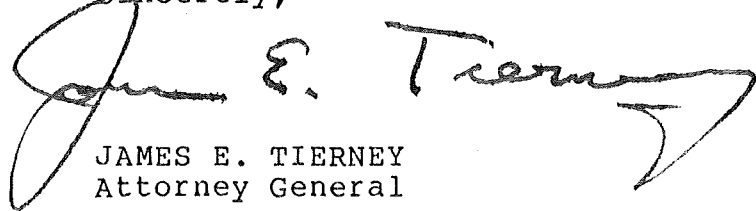
^{7/} Pursuant to 39 U.S.C. § 3903 (1976), the U. S. Postal Commission has promulgated a rule whereby the postmaster is required to maintain for one year "[r]ecords of permanent change of address orders." Domestic Mail Manual § 159.213 (1982).

^{8/} If the registrar were to receive other reliable information that would indicate a voter has died, moved, or otherwise has become disqualified from voting, then the registrar could, after notice, remove that voter as well.

* * * * *

I hope this information is helpful. If you have further questions, please feel free to reinquire.

sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is fluid and cursive, with a large initial "J" and a long, sweeping tail.

JAMES E. TIERNEY
Attorney General

JET/dab