

MAINE STATE LEGISLATURE

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EIGHTY - SEVENTH LEGISLATURE

Legislative Document

No. 776

House of Representatives, March 19, 1935.
Read and placed on file. 500 copies ordered printed.

HARVEY R. PEASE, Clerk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-FIVE

QUESTIONS AND ANSWERS

Questions relative to representative town meeting in town of Sanford
Submitted by the House of Representatives of Maine to the Justices of
the Supreme Judicial Court of Maine, March 5, 1935, with the Answers
of the Justices Thereon.

STATE OF MAINE

In House, March 5, 1935.

WHEREAS, there is now pending in the Legislature of the State of
Maine a bill providing for a representative town meeting in the town of
Sanford; and

WHEREAS, said bill provides for the division of said town by the
selectmen into not less than five nor more than ten districts; and

WHEREAS, said bill further provides that each district shall elect a
certain number of representatives known as town meeting members, to wit,
one town meeting member for a designated number of registered voters
therein or a fractional part thereof, the elective town meeting membership,
however, to be in no case less than one hundred fifty members nor more
than two hundred members, with the further provision for membership of
certain town officials ex officio; and

WHEREAS, said act further provides that the town shall have the capacity to act through and to be bound by its town meeting members who shall, when convened from time to time, constitute representative town meeting; and the representative town meetings shall exercise all powers vested in the municipal corporation. Action in conformity with all provisions of law now or hereafter applicable to the transaction of town affairs in town meetings shall, when taken by any representative town meeting in accordance with the provisions of this Act, have the same force and effect as if such action had been taken in a town meeting open to all of the voters of the town as organized and conducted before the establishment in the town of representative town meeting government; and

WHEREAS, said act provides that the town officers, other than town meeting members, shall be balloted upon by all of the voters of the town, but that each district shall elect the number of town meeting members to which it is entitled, based upon the number of registered voters therein as above set forth; and

WHEREAS, said bill further provides that each district shall vote at such voting place as the selectmen in the warrant shall designate; and

WHEREAS, said bill further provides that such voting place may or may not be within the territory of the district, and the only difference in the ballot of the respective districts being that the names of the town meeting members to be elected from any district appear on the ballot of that district only;

And it appearing to the House of Representatives that important questions of law have arisen in the determination of the constitutionality of said bill and that the occasion is a solemn one;

IT IS ORDERED that the Justices of the Supreme Judicial Court are hereby respectfully requested to give to the House of Representatives of the State of Maine, according to the provisions of the Constitution in this behalf, their opinion of the following questions, viz:

Question 1. Has the Legislature authority under the Constitution to authorize the establishment of a town government wherein authority to vote upon any business transacted at a town meeting is given to a limited number of representatives elected by the voters of the town and to such ex officio members as the town may designate?

Question 2. Is it necessary under the Constitution of the State of Maine that the voters of the whole town have an opportunity to vote for each representative or town meeting member, or may the Legislature authorize a division of the town into districts, each district being entitled to elect one representative or town meeting member for a designated number of registered voters therein or fractional part thereof, with authority in such town meeting members and such ex officio members as the town may designate, to bind the town at any town meeting in the same manner as if the meeting had been open to all of the voters of the town?

HOUSE OF REPRESENTATIVES

March 5, 1935

Read and laid on the table in compliance with House Rule 46.

Harvey R. Pease,
Clerk.

HOUSE OF REPRESENTATIVES

March 6, 1935

Under suspension of the rules,
out of order

On motion of Mr. Demers of Sanford taken from the table and on further motion of same gentleman Passed.

Harvey R. Pease,
Clerk.

A True Copy:

Attest: HARVEY R. PEASE,

Clerk.

Mr. Demers
Sanford

TO THE HONORABLE HOUSE OF REPRESENTATIVES OF THE
STATE OF MAINE :

The undersigned Justices of the Supreme Judicial Court, having considered the questions upon which their advisory opinions were requested by House Order of March 5, 1935, respectfully submit the following answers :

Question 1. Has the Legislature authority under the Constitution to authorize the establishment of a town government wherein authority to vote upon any business transacted at a town meeting is given to a limited number of representatives elected by the voters of the town and to such ex officio members as the town may designate?

Question 2. Is it necessary under the Constitution of the State of Maine that the voters of the whole town have an opportunity to vote for each representative or town meeting member, or may the Legislature authorize a division of the town into districts, each district being entitled to elect one representative or town meeting member for a designated number of registered voters therein or fractional part thereof, with authority in such town meeting members and such ex officio members as the town may designate, to bind the town at any town meeting in the same manner as if the meeting had been open to all of the voters of the town?

Answer. One answer may suffice for both questions.

Towns are mere agencies of the State. They are purely creatures of the Legislature and their powers and duties are within its control. The wisdom, reasonableness and expediency of statutes, and whether they are required by the public welfare, are subject to exclusive and final determination by the law-making power, which is measured not by grant but by limitation. It is absolute and all embracing except as expressly or by necessary implication limited by the Constitution. The Court will only pronounce invalid those statutes that are clearly and conclusively shown to be in conflict with the organic law. Municipal corporations are but instruments of government, created for political purposes and subject to legislative control.

Legislative authority to create and incorporate political subdivisions of the State clearly embraces the right to alter or amend the original charter or act of incorporation as the public welfare demands and the wisdom of the law-making power dictates. The Legislature for more than a hundred

years has exercised the power to convert plantations into towns, to incorporate the inhabitants of towns as cities and, in recent years, as in the cases of Presque Isle and Washburn and in a lesser degree Bar Harbor and other towns, to materially modify the usual form of town government. In the absence of a constitutional limitation in this regard, the right to exercise this authority cannot be questioned.

Legislative authority to grant to a city a charter embracing the features contained in this bill is obvious. Whether a municipal corporation is denominated "city" or "town" is not of essential importance. Much as it offends against the use of terms, regardless of historic significance and accepted meaning, to entitle as a town a political subdivision of the state in which the entire electorate is not permitted to assemble in annual town meeting and individual voters play no more important part in local government than do those who reside in cities, it is not beyond legislative authority to so enact, within the limits of reason, especially when safeguarded, as in the present Act, by conditioning its effectiveness on the approval of the interested community.

Whether the inhabitants of incorporated towns should, instead of legislating directly by participation of qualified electors at town meetings duly held, be invested with authority to act with respect to corporate affairs through the intervention of chosen representatives, is a matter of legislative and not judicial concern, so long as constitutional limitations are observed.

Sanford has a population of more than thirteen thousand, its registered vote exceeds fifty-two hundred, and the ordinary method of conducting town business may have become impracticable. We assume that certain of its citizens prefer the proposed arrangement to a city charter. If the Legislature believes it wise to grant the request, we find nothing in the Constitution forbidding it.

In view of the fact that the proposed Act involves a system of government differing so markedly from any yet adopted by any town, it might not be unwise to incorporate an express provision that the change in form does not affect the legal responsibilities or privileges of the town nor the application of general statutes to its affairs. The proposed Act does not offend the Constitution.

Very respectfully,

W. R. PATTANGALL
CHARLES J. DUNN
GUY H. STURGIS
CHARLES P. BARNES
SIDNEY St.F. THAXTER
JAMES H. HUDSON

Dated March 16th, 1935.