

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

FIFTY-SIXTH LEGISLATURE

OF THE

STATE OF MAINE.

1877.

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1877.

OPINIONS OF THE JUSTICES OF THE SUPREME
JUDICIAL COURT.

UPON QUESTIONS PROPOSED BY THE EXECUTIVE COUNCIL.

“ORDERED, That the opinion of the Supreme Judicial Court be requested on the following questions :

First. Can the Governor and Council, in the performance of their duty to ascertain what county officers were elected at the general election in September, lawfully count the votes of a town the return of which bears the proper signature of one of the Selectmen, and the names of the two other Selectmen written by other hands than their own?

Second. Can the Governor and Council, in the performance of their duty in counting the votes for county officers, lawfully count the votes of a town, the return of which is not attested by the town clerk?”

BANGOR, Dec. 22, 1877.

The undersigned, Justices of the Supreme Judicial Court, have the honor to submit the following answer to the interrogatories proposed :

Wherever the Constitution or the Statutes of the State require the official signatures of public officers, they must personally affix their signature or mark. This duty cannot be executed by attorney or delegated to another. By R. S., c. 1, § 1, rule 18, “The words ‘in writing’ or ‘written’ include printing and other modes of making legible marks. When the signature of a person is required he must write it or make his mark.” In *Chapman vs. Limerick*, 56 Maine, 393, this question came before the Court. Mr. Justice Kent in delivering the opinion of the Court says : “It requires no argument to show that it was never in the contemplation of the law makers, that official certificates or returns which the law requires of those holding certain offices, might be by attorney or agent, or that they could have any legal validity,

unless signed by the officers so that they should bear his own hand-writing." The Selectmen are required to sign the returns, but if all save one were permitted to sign by attorney, there would be no reason why the same permission should not be extended to all, and if this were allowed there might be returns counted to which none of the officers have affixed their signatures as required by law.

It is to be regretted that votes are lost by the negligence or ignorance of town officers, but the obvious remedy is to choose such as know their duty, and knowing it, will legally perform it.

To the first question proposed we answer in the negative.

The town clerk is the recording officer of the doings of the town, and without his attestation there is no legal evidence that any vote has been cast. His attestation is a prerequisite to any action on the part of the Governor and Council in counting votes.

Indeed, the power of the Governor and Council in relation to the proof upon which they are authorized to act is confined to legal returns duly transmitted, except in the special cases where enlarged powers have been conferred by Statute. 64 Maine, 590.

The second question proposed we answer in the negative.

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