

From: Legal Services Department <Legal@memun.org>
To: "ajtrev@gwi.net" <ajtrev@gwi.net>
Date: 7/28/2009 4:18:48 PM
Subject: Non-citizen Voting in Municipal Election

Hello, Anna.

Although I have briefly discussed this issue with Corporation Counsel Gary Wood, our legal staff has not issued a formal opinion on the question of whether a municipal charter may permit non-citizens to vote in local elections. While I have not had the opportunity to research the matter in detail, I am concerned that current State law appears to expressly limit the "home rule" authority that a municipality might claim under Article VIII, Part Second of the Maine Constitution ("The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character.").

Title 30-A M.R.S.A. Section 2501

(<http://www.mainelegislature.org/legis/statutes/30-A/title30-Asec2501.html>) is the statute that generally addresses the relationship between election laws found in Title 21-A covering state elections, Title 30-A covering town and city elections, and municipal charter provisions governing elections. This statute, found in Title 30-A, states that the method of voting and the conduct of a municipal election are governed by Title 21-A "[u]nless otherwise provided by this Title or by charter." However, Title 30-A Section 2501 further specifies that "(t)he qualifications for voting in a municipal election conducted under this Title are governed solely by Title 21-A, section 111." (emphasis added)

In turn, 21-A M.R.S.A. Section 111

(<http://www.mainelegislature.org/legis/statutes/21-A/title21-Asec111.html>) provides, in part, "A person who meets the following requirements may vote in any election in a municipality... [t]he person must be a citizen of the United States."

As you are probably aware, legislation to overcome this apparent limitation was considered and rejected by the 124th Legislature. See L.D. 1195, "An Act to Allow Non Citizen Residents to vote in Municipal Elections," found here: http://www.mainelegislature.org/legis/bills/bills_124th/billtexts/SP044301.asp

Consequently, in my opinion the authority of a municipality to adopt a home rule charter provision permitting non-citizens to vote in municipal elections is, at best, questionable.

I hope this is helpful to you. Please note that I am forwarding a copy of this email to Elizabeth Boynton, as it is my understanding that she is Counsel to the Commission, and to Gary Wood, Corporation Counsel.

William W. Livengood, Director
Legal Services Department

Maine Municipal Association
60 Community Drive, Augusta, ME 04330
1-800-452-8786 (in state)
207-623-8428
FAX 207-624-0187
legal@memun.org

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