

# **CHAPTER 5 – Voters’ Petitions**

## **Introduction**

State law makes important provisions for voters’ right of petition. That right includes the right to petition for town meetings for the voters to consider specifically requested articles. Municipal officers need to know Maine law and procedure, and their own duties and powers, relating to petitions.

In Chapter 2 we reviewed generally the nature of the business (ordinances, resolutions, budget proposals, etc.) that can be scheduled on a warrant for transaction at a town meeting, and we have stated that any of those matters can be the subject of a petition for an article on a warrant. Such a petition can arise in a town that does all of its business in an open town meeting forum, or in a secret ballot town, where referenda are allowed.

This chapter concerns only petitions relating to issues, not petitions to nominate candidates for town offices (those are discussed in Chapter 8). We try here to lay out the A to Z of petitions, including such issues as who may circulate them, who may sign them, how many people must sign them, the circumstances under which they can be denied, and how soon after filing of a petition a town meeting or election may or must be scheduled.

This chapter is intended primarily for the municipal officers’ attention, but clerks and registrars will want to read at least the discussion of validation of petitions.

## **Effect of Charter**

This chapter does not address specifically the availability of a right of petition under town or city charters, the kinds of petitions that various town or city charters may allow or the limitations such charters may place on the kinds of issues that can be the subject of petitions, or any local requirements for petition processes. This chapter instead discusses only those petitions which arise under the general law of Title 30-A applicable to towns and plantations.

Officials in municipalities with comprehensive charters that include provisions regarding the petition process should remember that those provisions (for the most part) take precedence to the state laws discussed here. The local charter should always be consulted first when presented with a petition. If there is any question about whether the charter or state law controls, officials should seek legal counsel.

## Free Circulation of Petitions

### Overview

In 1989, it came to the attention of the Legislature that one or more municipalities had charters or ordinances requiring voters to come into a town or city office in order to sign petitions, rather than allowing petitions to circulate freely among the general municipal population. The Legislature responded to this by enacting 30-A M.R.S. § 2504, which bars municipalities from enacting any charter provision or ordinance “prohibiting the circulation of petitions for any local initiative.” Accordingly, towns must allow petitions for local initiatives to be freely circulated.

Note that a petition for inclusion of an article in a warrant under 30-A M.R.S. § 2522 or to place an article on the ballot in a secret ballot referendum under 30-A M.R.S. § 2528(5), may be circulated but only as provided under the provisions of State election law (21-A M.R.S. § 903-A). This requires the circulator to fulfill certain responsibilities, which we will discuss in more detail later in this chapter.

### Examples

Section 2504 lists, by statutory reference, four specific kinds of local petitions that can be circulated by any registered voter, but these are set forth in the statute as examples only of local “initiatives”:

1. Petition for an article on the warrant for an open town meeting (30-A M.R.S. § 2522);
2. Petition for a local referendum election in a secret ballot jurisdiction (30-A M.R.S. § 2528(5));
3. Petition for an ordinance in a city to establish a local right of initiative and referendum in municipal affairs, and a petition arising under such an ordinance (Constitution of Maine, Art. IV, Pt. Third, Sec. 21); and
4. Petition pursuant to a municipal charter provision authorizing local initiatives.

Understand that this statute *does not create any new right* of petition: it merely requires that petitions subject to it be allowed to circulate freely within a municipality. For example, voters cannot be required to come in and sign them at city or town hall.

## Who May Circulate Petition

Until recently, both state law and the Maine Constitution required the circulator of a voter petition to be a Maine resident. However, a federal court ruling in 2022 raised questions as to whether this residency requirement violates the First Amendment as an impermissible restriction on speech. *We the People PAC v. Bellows*, 40 F.4th 1 (1st Cir. 2022). In this decision the court prohibited the Secretary of State's Office from enforcing the residency requirement for circulators of voter petitions for state referenda. The State Legislature removed the residency requirement in 21-A M.R.S. § 903-A as a result of this decision. P.L. 2023, ch. 304, § A-35. However, state law still requires a circulator to attest (in the circulator's affidavit) that they are a registered voter of the state at the time of circulating the petition. The Maine Constitution also still requires circulators of voter petitions to be residents of the state. Note: the statewide referendum article proposed to the voters to amend the Maine Constitution for this purpose was voted down in November 2023. Therefore, MMA Legal Services generally advises municipal officers against refusing a voter petition on the sole basis that one or more of the circulators are not Maine residents. If the municipal officers wish to refuse a voter petition on this basis, consultation with local legal counsel is recommended.

Note that other statutes may impose different requirements pertaining to the circulation of voter petitions for specific types of petitions. For example, the statutory procedures for adoption and revision of charters can be initiated either on order of the municipal officers or by local petition, but the petition must have a committee of locally registered voters. See 30-A M.R.S. § 2102(3). Accordingly, statutes specific to the subject matter of a petition should always be consulted.

## Who May Sign Petition

Under all statutes concerning municipal petitions, only the signatures of voters registered to vote in the municipality in which the petition arises will count towards any applicable statutory requirement that a certain number or percent of signatures be obtained.

## Governing Statutes (Overview of 30-A M.R.S. §§ 2522 and 2528)

The remainder of this chapter is addressed principally to the general power of petition for a town meeting or election warrant article. The statute governing open town meeting warrant article petitions is Section 2522, while Section 2528 governs secret ballot referendum petitions. The third pertinent statute, Section 2521(4), is discussed further below.

Let's compare the two principal petition statutes:

**Section 2522 (open town meeting):** “On the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall either insert a particular article in the next warrant issued or shall within 60 days call a special town meeting for its consideration.”

**Section 2528(5) (secret ballot referendum):** “By order of the municipal officers or on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall have a **particular** article placed on the next ballot printed or shall call a special town meeting for its consideration. A petition or order under this subsection is subject to the filing provisions governing nomination papers under subsection 4.” (Subsection 4 requires filing by the 60<sup>th</sup> day before the day of voting).

As can be seen from the above, the two statutes contain the same basic requirements. Both call for a written petition to the municipal officers and both require the same threshold number of signatures. The only clear principal differences between these two statutes are the mention of 60 days in the open town meeting petition statute (Section 2522) and the requirement in the secret ballot referendum statute (Section 2528) to file by the 60<sup>th</sup> day before election day. We discuss these timing requirements below in this chapter.

## **Circulators of Petitions; Their Obligations**

As noted above, there is no requirement that the circulators of a Section 2522 or 2528 petition be voters or residents of the town.

Legislation enacted in 2015, 2017, and 2019 revised the duties of persons circulating petitions for a statewide ballot initiative. See 21-A M.R.S. §§ 902 and 903-A. In general, these sections provide that a circulator of a statewide petition must solicit signatures for the petition by presenting the petition to the voter for signature and personally witness the voter signing the petition. The circulator must verify by oath or by affirmation that to the best of his or her knowledge and belief, each signature is the signature of the person whose name it purports to be, or it was made by the authorized signer (under 21-A M.R.S. § 153-A) in the presence and at the direction of the voter.

State law also requires a petition circulator for a statewide ballot initiative to execute an affidavit that includes: (1) the circulator's printed name, the physical address at which the circulator resides, and the date the circulator signed the affidavit; (2) acknowledgement that

the circulator read the information provided by the Secretary of State and understands the laws governing the circulation of petitions; and (3) acknowledgement that the circulator understands they can be prosecuted for violating the laws governing circulation of petitions. This affidavit for a state-wide ballot initiative petition is to be filed with the Secretary of State at the time the petition is filed. While § 903-A(4) also requires that the circulator acknowledge that they are a resident and registered voter in the State of Maine at the time the petition is circulated, as noted above, this requirement is likely unenforceable. Therefore, we have removed this requirement from our sample affidavit. See Appendix 4.

It is not clear to what extent the State Legislature intended the changes in Title 21-A to apply to local petitions. However, because the law governing circulation of municipal petitions (30-A M.R.S. § 2504) expressly references 21-A M.R.S. § 903-A, the link between 30-A and 21-A cannot be ignored. Until the law is clarified, it is possible that a court would hold that the state circulator duties are applicable, at least in part, to petitions circulated under 30-A M.R.S. §§ 2522 and 2528. It is also possible that a court could hold that certain provisions will apply to municipalities governed by a charter, at least in part.

Knowing that 30-A incorporates 21-A, but that parts of 21-A M.R.S. § 902 and 903-A appear to apply only to statewide ballot initiatives, MMA Legal Services suggests a generally conservative approach.

As a baseline, municipalities should probably require that circulators of local petitions: (1) personally witness the signatures of voters signing the petition; petitions should not simply be left unattended on the counter of a store, at the municipal office, or at other locations to be collected later; (2) verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the circulator personally witnessed all of the signatures to the petition and that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be; and (3) include the printed name, street address and municipality of residence of each registered voter on the petition.

Beyond the baseline requirements above, the municipal officers must determine how strictly they want to apply the provisions of 21-A M.R.S. §§ 902 and 903-A. The municipal officers may prefer circulators to meet all reasonably applicable criteria in §§ 902 and 903-A and refuse a petition if the circulators do not fully satisfy those requirements. However, as noted above, refusing a petition because the circulator(s) are not residents or because of a technical requirement that is not clearly applicable to local petitions could be susceptible to a legal challenge.

It bears reminding that if a petition for a local vote fails to comply with the technical requirements of 21-A M.R.S. §§ 902 and 903-A, the municipal officers may exercise discretion to accept the petition for placement on a town meeting warrant anyway. The circulator's obligation is not one imposed on municipalities. So, if the municipal officers wish to extend leniency by overlooking a circulator's failure to comply with all the technical requirements of 21-A M.R.S. §§ 902 and 903-A, they have the prerogative. However, due to the confusing language in the law, we strongly encourage municipal officers to consult with local legal counsel before rejecting a voter petition, particularly when the refusal is based solely on technical deficiencies.

A sample petition form containing a circulator's oath is included in Appendix 4 for municipalities to make available, if they choose.

Nothing in the law appears to require the clerk to prepare or hand out petition blanks for circulators of petitions under 30-A M.R.S. §§ 2522 or 2528. Note that petitions to form a charter commission to initiate or revise a municipal charter are prepared by the municipal clerk pursuant to criteria in 30-A M.R.S. § 2102. In addition, state law requires the clerk to issue petition forms for citizens pursuing the recall process outlined in 30-A M.R.S. § 2505 (elected official convicted of a crime committed during the official's term of office whose victim is the municipality). Finally, a municipal charter may also require the clerk to issue petition forms for local citizen initiatives.

After administering the oath or affirmation to the circulator, the notary public or other authorized person must sign the notarial certificate on the petition while in the presence of the circulator. The petition must then be submitted to the registrar for certification in accordance with Maine law. See 21-A M.R.S. § 902.

In addition, the circulator of a petition for a charter commission must execute an affidavit on the back of each petition form attesting to six elements (see 30-A M.R.S. § 2102(B)(3)), and local charters often require such a statement or attestation.

## **Form of Petition**

The law prescribes no particular form for petitions arising under Sections 2522 and 2528. However, the text of the law itself implies what some of the content of the petition should be:

1. A petition should be addressed to the municipal officers. Section 2522 petitions typically are addressed "To the Municipal Officers of the Town of \_\_\_\_\_" and begin with the phrase "We, the undersigned, being registered voters of the Town of \_\_\_\_\_, request

the municipal officers to place the following article before the voters for their consideration” and follow that introduction with the text of the article itself.

2. A petition requesting a referendum vote under Section 2528 should indicate that request (the petitioners may reference Section 2528 specifically or may request a “secret ballot,” “Australian ballot” or “referendum”). If the petition fails to expressly request a secret ballot vote or to reference Section 2528, the selectmen have the choice on whether to bring the matter to an open town meeting or to call for a secret ballot referendum vote.
3. A petition must state the article upon which a town meeting vote is requested. The article preferably will be included at the top of each signature page, as a failure to do so may lead to doubt about whether each of the signers had before him or her the full text of the petition when signing.
4. A petition must include a circulator’s affidavit in a similar format to the form required for state petitions pursuant to 21-A M.R.S. § 903-A.
5. Along with each registered voter signature, the petition must include the printed name of the voter and the voter’s street address and municipality of residence.

With two exceptions, there is no express Title 30-A requirement that a clerk or other municipal official prepare a form and make it available to anyone who wishes to circulate a petition. The first exception requires the clerk to prepare forms for the recall of municipal officials under 30-A M.R.S. § 2505 (recall of elected official convicted of a crime committed during the official’s term of office whose victim is the municipality. The requirements for these forms are set forth in § 2505, but there are three basic requirements for the form, namely, it must contain: (1) the name and position of the official subject to recall along with the name and contact information of the initiator of the petition; (2) spaces for each voter’s signature; and (3) space for the contact information of the person circulating the petition form. The other exception requires the municipal clerk to prepare petition forms for use by citizens seeking to form a charter commission to establish, revise, or amend a municipal charter. The forms must be prepared according to criteria listed in 30-A M.R.S. § 2102. See Chapter 5 of MMA’s *Clerks Manual* for additional information and for sample forms.

For statewide referenda, Maine election law (21-A M.R.S. § 901) requires the clerk to make petition forms available, but MMA Legal Services believes that provision is inapplicable to municipal petitions. Nevertheless, it may be a good idea to make petition blanks available upon request. This helps lessen the occurrence of poorly formatted petitions, which can often be confusing to the municipal officers. Note that unless a local charter requires it, a municipality cannot compel petitioners to use its form.

We caution officials to avoid helping petitioners draft articles except where the official actually wants to be involved in the petition in his or her personal capacity. Doing so may set a precedent and lead to being perceived as taking a political side, even if the official was just trying to be helpful.

As a result of legislation revising the procedures for circulation of state initiative petitions, the law now appears to require that in addition to the signature of a registered voter, the petition also contain the printed name, street address and municipality of residence of each voter signing the petition. Ditto marks are permitted for residence address and municipality of registration only. See 21-A M.R.S. § 354(3) and (4), § 902, § 903-A, and 30-A M.R.S. § 2504. For ease of validating petitions (discussed below in this chapter), if sample petition forms are provided by the clerk, the forms should have a column each for signatures, printed names, and voters' street addresses, as well as a column for the name of the municipality of the voter's residence. Note that the municipality may choose not to provide sample petition blanks.

A sample petition form appears in the Forms Appendix.

## **No Specific Filing Requirement**

Neither Section 2522 nor Section 2528 expressly says that a petition must be submitted directly to the municipal officers, although it should be addressed to them (as in the example above). A petition may come to any of them, or be filed with the clerk across the counter in the municipal office. Whichever municipal official first receives a petition should note the date of receipt upon it. It should be forwarded to the municipal officers promptly upon receipt.

## **Verification and Certification of Signatures**

### **Overview**

Verification and certification is the process of determining whether a petition was signed by registered voters in the community and that the signatures were personally witnessed by the circulator. Any petition that is circulated seeking to place an article on a town meeting warrant or seeking to place a question on a ballot for a secret ballot referendum vote must be signed in the same manner required for non-party nomination petitions under State election law, 21-A M.R.S. § 354(3) and (4). See 30-A M.R.S. § 2504 and 21-A M.R.S. §§ 903-A and 902. The verification and certification process would include verifying the requisite number of signatures required to sustain a petition were gathered.

If a petition *does not* have the requisite number of signatures, or if it fails to meet all the verification and certification requirements, the municipal officers may dismiss it without further consideration. If it does meet all these minimum requirements, then it must be considered on its merits.

## **Verification**

The first step in determining whether a petition for any local initiative will be forwarded to the legislative body for consideration is to verify the signatures. The circulator must sign the petition and verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the circulator personally witnessed all of the signatures to the petition and that each signature is that of the person whose name it purports to be, or it is the signature of someone authorized to sign on behalf of the voter with disabilities (21-A M.R.S. § 153-A). The signatures must be from residents of the municipality registered to vote in the municipality. Verification may be accomplished either before the petition is submitted to the municipality for certification or at the time of submission.

## **Certification**

Once the verification process is completed and the verifying official—a notary or person administering the circulator’s oath—has administered the oath to the circulator, the signatures must be certified. Certification is the second step in determining whether a petition for a local initiative will be forwarded to the legislative body for consideration.

Certification means that the signatures of each signer of the petition will be confirmed as a registered voter in the municipality. The obvious way to accomplish certification is to compare the names of petition signers with information in the Secretary of State’s central voter registration system. Even with a circulator’s affidavit, the clerk or registrar should confirm that the names on the petition are names on the voting list. As part of the certification process, the minimum number of signatures required to support a petition will be calculated.

There is no requirement that certification occur prior to evaluating the merits of a petition, or vice versa. Typically, towns choose to perform the certification first so that the municipal officers do not spend time considering the merits of a petition that is not binding. However, some boards of municipal officers choose to immediately consider the substance of a petition so that the sometimes lengthy step of verifying and certifying the petition can be avoided if the petition is without legal merit (see discussion below) or if the municipal officers choose to place the article on their own initiative.

If it cannot be ascertained that a petition signature is indeed the signature of a registered voter of the municipality, or if there are duplicate signatures, the certifying official (registrar or clerk) should indicate as much by a checkmark and initials in the margin next to the entry, not by striking out or otherwise obscuring the signature.

For the purposes of Section 2522 and 2528 petitions, the base for calculating the number of signatures required is the number of votes cast in the municipality in the last gubernatorial election. That base number can be determined from the return of the most recent gubernatorial election filed with the Secretary of State. The total number should include any write-in votes cast for the office of Governor, as well as the votes cast for the candidates whose names were printed on the ballot, but should not include the number of ballots that were cast without any choice marked or written-in for the office of Governor.

If the number of valid signatures does not equal or exceed 10 percent of the base number of gubernatorial votes, and in any event if there are fewer than ten valid signatures, then the petition is insufficient.

If a petition contains a sufficient number of valid signatures, then the certifying official should certify that determination to the municipal officers and forward the petition or an attested copy to them for their consideration. If the number of valid signatures is insufficient, then the certifying official should certify that finding, and forward a certificate and the petition or an attested copy to the municipal officers, who should thereupon vote to dismiss it as insufficient. If they wish to further insulate their action from attack and can agree on another reasonable basis for refusing to act favorably on the petition or there are obvious problems with the petition request (see discussion below), then they can (but are not required to) go on record with a vote stating the reasons that even if there were sufficient signatures, they would not act favorably on it.

### **Responsibility for Certification**

Title 30-A does not specify who is responsible for certification of a petition, but provisions of Title 21-A referenced through 30-A M.R.S. § 2504 indicate that the registrar (or clerk, if the registrar is not available), would certify the petition signatures. See 21-A M.R.S. §§ 903-A and 902. In some municipalities, one person holds both of these offices, but in others not. Assignment of certification responsibility may be a matter of custom, job description or ordinance.

## **Additional Procedure Where Signatures Insufficient**

Though not required by law, the municipal officers may determine, instead of dismissing a petition bearing an insufficient number of valid signatures, to specify an additional period of time in which circulators will be allowed to gather and submit a sufficient number of additional signatures to meet the minimum necessary. But never return the original petition as it is now a public record under Maine's Freedom of Access Act and must be retained.

The municipal officers should preferably create a written statement of policy concerning petitions before doing this. Such a policy could provide that: the original petition will remain on file and cannot be returned to the circulators; any additional signatures submitted will be subject to validation and certification; a new and final certificate of sufficiency (or insufficiency, as the case may be) will be prepared by the validator and submitted to the municipal officers, who will thereafter address the merits of the petition; and upon certification the supplemental petition may be associated with, and if the entirety is now sufficient, incorporated with the originally filed petition.

In adopting such a policy, municipal officers may wish also to review and borrow from 30-A M.R.S. § 2102(4), which, for charter commission petitions, expressly authorizes and provides procedures for a single supplemental petition filing where an initial filing is insufficient.

## **Staleness of Signatures**

Section 2522 does not specify how recently before a filing the signatures on a petition must have been collected. This is the concept of staleness. It is not ordinarily a concern in petitions for business articles, as opposed to petitions for nomination of candidates (for which Section 2528 makes specific provisions, to guard against stale petitions).

However, controversies on issues come and go. Voters may not feel the same way about the subject matter of a petition six months or a year after they sign it, particularly if the municipal officers or town meeting have already taken action on the issue by the time the petition is submitted. Accordingly, if it is clear from the face of a petition that the signatures on it were collected a year or more, say, before the filing date, the municipal officers may wish to suggest to any known circulators that the petition may be stale, and that the circulators should gather additional, fresh signatures, or circulate another petition. The municipal officers should always *consider* a petition even if they believe it to be stale. Staleness may be a ground for dismissing a petition upon review, but legal counsel should be consulted before doing so. Also, because charters sometimes impose time limits regarding petition submissions, a charter's provisions should always be consulted. State law also sometimes imposes time limits

on petition submissions. For example, the local liquor option requires that all signatures on a petition for a local option election must have signed since the last general election, and the petition must be submitted to the municipal officers at least 60 days before holding any municipal election or town meeting vote.

## **Withdrawal of Signature from Petition**

When, if ever, may one who has signed a petition withdraw his or her name from it?

### **Withdrawal Before Filing of Petition**

A voter who has signed a petition may inquire of a clerk or other municipal official whether the voter's name can be withdrawn before filing. The clerk should refer the inquirer to any known circulator of the petition, as that is a matter between the circulators and the signer. No law known to MMA Legal Services staff requires a circulator to permit a signer to withdraw, but a circulator may be willing to accommodate the signer.

### **Withdrawal After Filing Not Permitted**

No statute expressly authorizes or forbids the withdrawal of a signature from a petition after filing. The recommended rule is simple: if you signed it, you cannot withdraw your name after filing. The petition, as filed, is a public record.

After filing of a petition, a signer's signature should not be erased, deleted, stricken out, or otherwise obscured or altered, and no entry should be made indicating that the signature is withdrawn. The signature, if it is that of a registered voter, will count in determining whether the required number of voters have signed, despite any expressed wish by a signer that the signature be discounted or disregarded.

A clerk, when confronted with a request for withdrawal, may (although not under any legal obligation to do so) advise the signer that: (1) signing a petition does not commit or bind a person to vote at all, much less to vote in favor of the issue presented; (2) if the issue is going to an open town meeting, the signer can appear and seek to speak in opposition to the issue despite having signed the petition; and (3) if it sufficiently concerns the signer, he or she can seek in other ways (e.g., letter to the editor) to disclaim support for the measure.

It may be important for clerks and other municipal officials to be aware of the human dimension of the matter of withdrawal of a signature. Sometimes a voter will realize only after a petition has been filed that it is open to inspection as a public record, and some may fear

employment or business recrimination or other adverse consequences for having signed. A voter may even have been threatened for having signed. Regrettable and understandable as such fears may be, however, there is no discretion or power to strike or obscure or otherwise delete the signature, and only sympathy can be extended.

## **Withdrawal of Petition**

As with withdrawal of a signature after filing, there can be no withdrawal of a petition or any portion thereof after filing. Neither the petition nor any part of it should be returned to a circulator. The underlying theory here is that once individual voters have signed a petition and it has been filed, they have acquired some right to consideration (if the petition is otherwise valid), which cannot be withdrawn or canceled by the circulators. *LaFleur, Atty. Gen., ex rel. Anderson v. Frost*, 146 Me. 270 (Me. 1951).

A deeper question is whether any action at all can be taken that will destroy the legal vitality of a petition once filed, such that its merits cannot be considered by the municipal officers. The answer to this is also in the negative, with one exception, suggested by *LaFleur*: if *all* of the voters who signed a petition filed affidavits (sworn statements) requesting withdrawal or inaction on the petition, then perhaps the municipal officers could choose to honor the affidavits and not consider the merits of the petition.

## **Consideration of Merits of Petition by the Municipal Officers**

### **Introduction**

The municipal officers can refuse to put a petitioned article on a warrant if it would be reasonable for them to do so. This is the concept known as “reasonable refusal.”

No definition of a “reasonable refusal” appears in the statutes. Our knowledge of this concept comes from case law. Before reviewing in detail what the decided cases teach us, it is very important to understand that the municipal officers may not refuse a petition merely because, from their political or personal perspective on what is appropriate for the municipality, they believe the petition is unreasonable. Their denial must be *objectively* reasonable as a matter of law, not merely subjectively reasonable in the view of the municipal officers.

## Necessity for Petition to be Presented

In order for anyone to claim that the municipal officers have refused to act on a petition, it must first be presented to the municipal officers. Without a request, there can be no refusal, reasonable or unreasonable. *Allen v. Hackett*, 123 Me. 106 (1923).

## Ultra Vires Request

The municipal officers can reasonably refuse to place a petitioned article on a warrant where it would be beyond the power of the voters of a town to act upon a particular article (such an action is said to be *ultra vires*, which in Latin means “beyond the powers”). Examples follow:

**EXAMPLE 1—Vacancy in elective office that municipal officers may fill by appointment.** With the exception of the positions of municipal officer and municipal school committee, a vacancy in office may be filled by the municipal officers by appointment of a successor, per 30-A M.R.S. § 2602, to serve out the remaining term. When the municipal officers, following a resignation of an elected official, appoint a successor who duly qualifies and is sworn, and are then presented with a petition for a special town meeting to elect a successor, it is reasonable for the municipal officers to refuse to honor the petition, because there then remains no vacancy to be filled. *Googins v. Gilpatric*, 131 Me. 23, 27 (Me. 1932) (treasurer). To the same effect is an *Opinion of the Attorney General*, May 13, 1980 (road commissioner). For more on vacancies, see Chapter 3.

**EXAMPLE 2—Cable television ordinance enactment is exclusive authority of municipal officers.** If petitioners sought enactment by the town meeting of a cable television enabling ordinance, the article would run afoul of 30-A M.R.S. § 3008(2), which gives the municipal officers the exclusive authority to enact such an ordinance. Adoption of such an ordinance by the voters would be beyond their powers, and the act would be void. Accordingly, a court would probably not require the municipal officers to hold a town meeting to vote on such an ordinance and would quash any warrant issued by a notary public for the call of such a meeting.

**EXAMPLE 3—ATV-access route designation.** Whether or not the municipal officers (selectmen or councilors) designate a particular road as an ATV-access route is entirely within their discretion—the decision rests exclusively with them. The public of course may attempt to influence their decision, but the municipal officers’ choice is not delegable to or subject to override by the voters. When it comes to regulating the use of local roads, the municipal officers are in the driver’s seat regardless of the municipality’s form of government.

NOTE: See Chapter 4 for discussion of the various types of ordinances which the municipal officers have sole authority to enact. A petition seeking town meeting enactment of any of these types of petitions can likely be reasonably refused.

**EXAMPLE 4—Article for vote to establish or change speed limit.** Municipalities may not establish, increase, or lower speed limits on any public road, including municipal roads. (There is an exception for qualifying municipalities. “Qualifying municipalities” are those with populations of 2,500 or more or any municipality employing a registered professional engineer. “Qualifying roads” are town ways that are federally classified as local). 29-A M.R.S. § 2075. Therefore, it would be entirely reasonable, as a matter of law, to refuse to call a meeting to vote on an article to establish, or to raise or lower, a speed limit. As a political matter, however, the municipal officers might wish to communicate with the Commissioner of Transportation in response to a petition to change or set a speed limit. See the discussion of this subject in MMA’s *Municipal Roads Manual*.

### **Request for Illegal Action**

Another situation in which courts have upheld the refusal of a petition as reasonable is where the petition requested an action that would be illegal if passed. Examples follow:

**EXAMPLE 1—Even if enacted, petitioned ordinance would be invalid.** In a case decided by the Maine Supreme Judicial Court, it was held that the municipal officers of Portland could not be compelled by the court to submit to the voters an ordinance that, if ratified, would be invalid. It would be a useless act on the part of the municipal officers, declared the Court, which then said that a court will not compel the performance of a useless act. *LaFleur, Atty. Gen. v. Frost*, 146 Me. 270, 290 (1951). The case involved a proposed ordinance submitted to the City by petition, but the Law Court determined that the proposed ordinance amounted to an impermissible amendment to the City’s charter.

**EXAMPLE 2—Article granting a tax exemption not authorized by state law.**

See Legal Note entitled “Voting a Tax Exemption” in the Appendix.

**EXAMPLE 3—Article for plowing private driveways at public expense.** A petition to use public funds to pay the winter maintenance crew or a private contractor to keep everyone’s driveway clear of snow would run afoul of the constitutional law doctrine that public funds cannot be devoted to essentially private purposes. See, *Opinion of the Justices*, 560 A.2d 552 (Me. 1989). Such a petition could be dismissed as asking for something not within the power of the voters to direct, or of the municipal officers of the town to accomplish.

## **Vested Rights; Intervening Rights of Third Parties**

Once a contract has been signed, or bonds have been sold, pursuant to an authorizing town meeting vote, it is too late for that vote to be reconsidered or rescinded. Our courts have repeatedly so held, as long ago as 1889 in *Parker v. Titcomb*, 82 Me. 180 (1889), and more recently in the 1991 case of *Dunston v. Town of York*, 590 A.2d 526 (Me. 1991), which involved an action to compel the selectmen to call a town meeting.

## **Petition to Reconsider Action After Formal Adjournment**

Sometimes, voters will seek to reverse the outcome of an open town meeting vote or secret ballot referendum by petitioning for a new meeting or election to consider the same question previously acted on (whether passed or defeated). A 1990 Maine Superior Court case on this point is worth discussing at some length.

The case dealt with a secret ballot referendum on a school construction issue, and held that it was not unreasonable for the municipal officers to refuse to put an issue to a second referendum vote, at least upon the petition of a minority of voters, where no irregularity appeared in the conduct of the first vote.

The town concerned had voted by secret ballot referendum, 399 to 390, to approve a school construction bond issue. A ballot inspection was requested and held, and apparently turned up nothing warranting a recount. Nine days after the election, however, the municipal officers were presented with a petition bearing a sufficient number of signatures to entitle it to their consideration. The petition asked for another election to revote the same issue. The municipal officers voted unanimously to reject the petition. Thereafter, a second petition was submitted, which sought an article to rescind the approval which had previously been given (the effect of the second petition was presumably much the same as the first, but the petitioners apparently tried to word the request differently in the hopes of receiving a more favorable response).

The municipal officers postponed a decision on the second petition and filed suit in Superior Court to determine their responsibilities to act on the new petition. While the suit was pending, a third petition was in circulation. It was addressed to a notary public, and alleged that the municipal officers had unreasonably refused to issue a warrant, and called upon the notary to do so. (See below for further discussion regarding petitions to a notary public.)

The Superior Court declared that the municipal officers' obligation to place petitioned articles before the voters for their consideration, under both 30-A M.R.S. §§ 2522 and 2528(5) "should be interpreted to apply to petitions proposing *new* articles for voter consideration or

concerning municipal officers' failure to act and should *not* apply to situations, such as the one presented here, in which minority voters seek a revote on a recently approved referendum." *Inhabitants of the Town of Vassalboro v. Frederick & Camille Denico, et al.*, Sup. Ct. Kenn. Cty., Docket No. 89-517 (Feb. 23, 1990), at p. 3 (emphasis added).

The Superior Court went on to say that even if, contrary to its considered judgment, Sections 2522 and 2528(5) *do* permit reconsideration elections (and not just petitions for new business articles) on the petition of a minority of voters, the denial in the case before it was not unreasonable as an abuse of discretion, because of factors the court reviewed. The court noted that although the voter turnout was low (it was a special election) and the margin of victory small, there were no allegations that voters were unable to get to the polls because of a natural disaster or other adverse circumstances. Moreover, the court found that the ballot inspection had revealed no evidence of fraud or impropriety and that the municipal officers had reasonably concluded that the voters were not misled prior to the election. Accordingly, the court upheld the municipal officers' refusal of the first two petitions and quashed any filing of the third. No appeal was taken in the case.

The significance of the decision is that it gives credence to the idea that municipal officers need not permit the "ping-ponging" of warrant issues back and forth by a minority faction of dissatisfied voters. The municipal officers, it appears, can reasonably conclude that the first valid vote on an issue will be the only vote on the issue.

Thus, municipal officers confronted with a "ping-pong" situation, where they conclude that it would be reasonable to refuse to call for another vote, can assert both prongs of the *Vassalboro* case and argue (1) that the law bars the petition and (2) (where appropriate) that if it does not, it is nevertheless reasonable for them to refuse to honor it in the particular circumstances. Certainly, if the municipal officers refuse a petition, their decision will be much more defensible if they have considered any applicable factors such as those covered in the *Vassalboro* case and determined that a revote is not warranted in order to receive a fair and valid outcome. It is always best to review the situation with legal counsel before refusing any petition. Of course, if the municipal officers are inclined to grant a petition for a revote, they can do so and leave it to others to argue that they should have refused it.

Another more recent case in which the Superior Court upheld the decision of the board of selectmen to refuse to call a town meeting in response to a petition submitted to them is *Friends of Mitchell Field v. Town of Harpswell*, No. PORSCCV180334 (Me. Super. Ct., Cum. Cty., September 5, 2018).

In the *Harpowell* case, the town meeting voted to authorize the demolition of a water tower. Within two months, a petition was submitted to the board of selectmen requesting a secret ballot vote that would have reversed this decision by authorizing the board of selectmen to enter into an agreement with a company for the repair and maintenance of the water tower. After considerable discussion and consultation with the town attorney, the selectmen refused to proceed with the requested secret ballot vote. The petitioners then requested the board to reconsider its decision. The board declined to reconsider its decision.

Following the board's refusal to reconsider its decision, the petitioners presented a copy of the petition to a notary public. The notary signed a warrant calling for a special town meeting. The board of selectmen at an open session declared that the notary's warrant was deemed to be invalid and directed the town clerk not to expend any funds in support of the notary-called special town meeting. The petitioners ultimately cancelled the special town meeting and instead, held a public informational meeting.

The Superior Court determined that although the wording of the petition was somewhat different than the wording of a similar but rejected article presented at the town meeting, the petition was asking for a revote on essentially the same question that had been decided at the town meeting—should the water tower be demolished or not? In answering that question, the Court observed that Maine law does not compel a municipal board to schedule a revote when presented with a petition by voters on an issue already acted upon by the town meeting (the legislative body). The Court also observed that even if the refusal by the board was unreasonable, the petitioner's petition to the notary was defective because it was the same petition addressed to the board, and not a separate petition addressed to the notary.

### **Unintelligible Petition**

It may be reasonable (although no decided case is known) to refuse to honor a petition where the petitioned article is hopelessly unintelligible to a reasonable and fair-minded reader—that is, where it is simply impossible, because of ambiguity, incompleteness, or other defect to discern what question the petition proposes to put before the voters. However, counsel should be consulted before any determination is made that a petition is so vague or incomplete or ambiguous that even if it were adopted no one would know what it meant.

### **Technical Deficiencies and Objections**

If a petition has been signed by the required minimum number of voters, a court will likely be impatient if the municipal officers have tried to turn every conceivable deficiency in the form of the petition into an argument for legal insufficiency. Here are five quick examples of

deficiencies or irregularities that may appear in a petition. All of the petitions in these examples should probably be allowed.

- A petition is not addressed to the municipal officers (as in the form, “We, the undersigned voters of the Town of \_\_\_\_\_, hereby petition the municipal officers of the said Town to place the following article before the voters for their consideration”) but merely says, “Please call a town meeting to consider the following article,” or something similar. The municipal officers should treat this as sufficient, if properly verified and certified and is otherwise legal.
- A petition is clearly addressed to the municipal officers but is delivered to the town clerk. This should not be a problem.
- A petition includes more than one article. This should not matter, even if they concern unrelated subjects. A court would likely not be receptive to a technical argument that a separate petition is required for each article, or for each subject matter.
- A petition circulator forgets to provide a space for petitioners to write in the name of the town.
- A petition includes some articles that appear proper and some that are clearly illegal or otherwise beyond the powers of the voters. This is not a basis for rejecting the entire petition. The articles that it would be objectively unreasonable to refuse should go forward to the voters.

The municipal officers should bear in mind, too, that although they cannot change the wording of a petition, they can, for an *open* town meeting warrant, include both the petitioned article and any alternative version they prefer. In their alternative version, they can correct any technical deficiency in the petitioned article. This is discussed further below.

### **Summary Advice**

Experience teaches that a court will listen carefully to arguments that a petition seeks an unauthorized act or thing, or that it seeks a revote on an issue that has recently been fairly and properly decided by a validly called and held town meeting. But it will probably not suffice if the basis for the refusal is merely the municipal officers’ subjective views—i.e., if they refuse a petition merely because it is inconsistent with their view of what is in the best interests of the municipality. And it will also probably not suffice if the objection is merely a technical one.

The best advice is to apply common sense and to be objectively reasonable along the lines discussed in this Manual, and to consult with counsel whenever refusal is contemplated.

## **Putting Issue to Vote**

### **Introduction**

Once a petition containing a sufficient number of valid signatures has been accepted, the obvious next question is when and how the municipal officers should put the question to a vote.

### **Request for Specific Meeting Date**

What if a petition specifies a date or a deadline for action on the petitioned article? We have stated in Chapter 2 that it is the municipal officers who set the date and time of annual and special meetings. There is nothing in the petition statutes that takes away this authority. Therefore, while municipal officers might try to comply with a request for political reasons, or because the petitioners have a good reason for demanding action on or by a certain date, there is no legal obligation to do so. Similarly, if a petition requests that a special meeting be called or that the issue goes to the annual town meeting, the municipal officers can decide to do the opposite of what is requested, as long as their decision is reasonable.

### **Timeline for Action on Open Town Meeting Petitions**

As we discussed briefly above, Section 2522 says that “the municipal officers shall either insert a particular article in the next warrant issued or shall within 60 days call a special town meeting for its consideration.”

The statute is somewhat confusingly worded and should not be read too technically. What it means is that the municipal officers can either act within 60 days to call a special town meeting to address the petitioned article (the meeting itself may be held more than 60 days away), or they can simply wait until the next town meeting arises and add the petitioned article to that warrant. The statute should not be taken to prevent the municipal officers from adding the article to a scheduled meeting for which a warrant has already been posted (provided at least seven days remain before the meeting) and/or which will be held in less than 60 days.

### **Timeline for Action on Secret Ballot Referendum Petitions**

Section 2528 provides that upon receipt of a valid petition requesting a secret ballot vote, “the municipal officers shall have a particular article placed on the next ballot printed or shall call

a special town meeting for its consideration.” By comparison, Section 2522 requires that a petitioned article be placed on the next warrant or that a town meeting be called within 60 days. Because Section 2528 simply requires an article be placed on the next ballot or the callings of a special town meeting, the municipal officers need not act as quickly as they would be required to under a Section 2522 petition. Section 2528 allows the municipal officers to either call a special town meeting to address the issue or wait until a ballot is called for some other purpose in order to include the petitioned article.

As with referenda called by order of the municipal officers, a petition for a secret ballot referendum must be submitted at least 60 days prior to the election at which the vote will occur. 30-A M.R.S. § 2528(5). This deadline allows sufficient time for the clerk to finalize the ballots so that they may be available to absentee voters. If a petition asks for placement on a certain ballot, but is submitted fewer than 60 days prior, the municipal officers cannot add the petitioned article to the ballot. While the petition cannot be refused, a later special town meeting will need to be called or the municipal officers will need to place the article on the next ballot printed. Alternatively, if the warrant has not already been posted for seven days and if no absentee ballots have been mailed out, the municipal officers can vote to take down the posted warrant and postpone the planned meeting far enough into the future to meet the 60-day requirement.

Municipal officers should remember that as with articles they order placed on the ballot, petitioned referendum articles must also go before a public hearing prior to the election. The public hearing must be held at least 10 days prior to the election, and public notice must be given at least seven days prior to the hearing. A sample hearing notice is included in the Forms Appendix and further discussion of the hearing appears in Chapter 4.

### **Concept of Reasonable Delay in Presenting Article to Voters**

At heart, both Sections 2522 and 2528, when considered in the context of reasonable refusal as discussed above, mean that the municipal officers can delay taking the issue to the voters if the issue is not pressing or the petitioners will not otherwise be prejudiced, or their interests completely destroyed, by delay. Reasonable considerations for delay include that voter turnout will be higher if the issue is presented at a later meeting (perhaps the annual meeting), or that the expense of a special meeting for this one issue is disproportionate or excessive and no other matters are pending or planned for a special town meeting.

Wherever time is of the essence, however, the municipal officers should not set the date for a vote so far into the future that the vote would be of no assistance to the petitioners. For instance, if the petition is to approve a grant application, it would not be reasonable for the

municipal officers to delay the vote beyond the application deadline. Similarly, if voters were to submit a petition in May to enact a moratorium to prevent certain land use activity, it would likely be considered unreasonable for the municipal officers to wait until the next March's annual town meeting to consider the moratorium, because the activity the article sought to prevent may have already occurred by that time.

A Penobscot County Superior Court decision illustrates a situation where it was deemed unnecessary for municipal officers to act quickly on a petition. Petitioners sought acceptance of a privately owned road as a public way. The municipal officers decided to put the article to a vote at the annual meeting six months away, which was the next warrant issued after the filing of the petition. The court found that there was no evidence showing an emergency, that the annual meeting was scheduled for "only" six months away, and that there was evidence that more town residents attended annual meetings than special meetings. *Goodwin v. Leeman*, Sup. Ct. Pen. Cty., Docket No. CV-8126 (May 28, 1988). The court appeared to accord little weight to the fact that the petitioners had to continue to endure expense to maintain the road until the annual meeting. Some frustration or inconvenience on the part of the petitioners is acceptable, but it would be wrong if their rights or opportunity to obtain the action they sought would be *completely* destroyed by delay.

## **Manner of Vote Requested**

As noted in the introduction to this chapter, a petition for an article could arise in a "pure" open town meeting town as well as in a secret ballot town. When a petition is submitted in a secret ballot town, some confusion can arise because a petition may not clearly request a particular type of vote. However, the circulators' intent may perhaps be inferred from the fact that such a petition is filed at least 60 days before a known or regularly held election (such as a November general election). Confusion can also arise in both secret ballot and open town meeting towns because voters often refer to a "secret ballot" when they mean a written ballot at an open town meeting. Generally speaking, if the desired manner of voting can be determined, the municipal officers should comply with that request. Here are some guidelines to follow:

- If a petition in a secret ballot town expressly or by fair implication asks for a secret ballot referendum vote, then it should be treated that way.
- If a petition in a secret ballot town asks for a "written" ballot and does not cite Section 2528 (or cites only Section 2522), then it can be treated as a petition for an open town meeting vote. The voters at the meeting can choose whether to vote by written ballot. They are not bound by the petition's request that a written ballot be used.

- If a petition in a secret ballot town is silent on the point, and if there is no basis for inferring a request for a secret ballot vote, then the municipal officers can order it to a vote either at open town meeting or by secret ballot referendum, as they prefer.
- If a petition in a town that has never accepted the secret ballot method of voting requests a “secret ballot vote,” and it is not submitted pursuant to any of the statutes that require secret ballot voting, then the municipal officers can only call an open town meeting at which the voters themselves can choose whether to vote by *written* ballot.

As mentioned above, it is believed that a request for a written ballot vote can be ignored, because the voters of an open meeting have authority over the procedure for the conduct of the meeting. For that reason, it would probably be inappropriate for the municipal officers in the warrant to “order” such an election to be by written ballot. The meeting moderator can be asked to mention the petitioners’ request and invite a motion to proceed by written ballot when presenting the article to the voters.

A petition arising under other statutes that require the use of Section 2528 secret ballot procedures, even in towns that are not secret ballot towns, should be treated as a petition for a secret ballot vote, and this is so even if such a petition does not expressly ask for a vote by secret ballot. Several such statutes are identified in Chapter 4. They relate to charters, local liquor option referenda, SAD and RSU referenda, school budget referenda, revenue bonds, school construction bonds, municipal electric districts, and municipal de-organization. Upon receipt of a petition that is clearly concerned with one of these subjects, the discussion in Chapter 4 and the pertinent statute cited therein should be reviewed carefully. Whenever a petition cites a statute, review it, as it may call for a secret ballot referendum vote even in non-secret ballot towns, or it may impose other special requirements.

## **Incorrectly Worded Petitioned Article—Use of Alternative Article**

### **Overview**

Sometimes a petitioned article will have typographical errors or apparently inadvertent gaps or omissions, will seem otherwise unclear, will mis-cite an ordinance which the article proposes to amend, or will have some other defect. Sometimes, too, a petitioned article will appear complete but have some other, clearly substantive defect. Also, the municipal officers may believe that there is a more direct or more efficient way to accomplish what they perceive is the petitioners’ objective. What are the limits of the municipal officers’ authority in such circumstances?

## **Typographical Errors and Other Defects**

The municipal officers should consider in all such cases that they have virtually no latitude to change the language of the petitioned article, *even with* the consent of the circulator(s) of the petition. This is because to alter the petitioned article would be to change what all of the signers—the petitioning voters—put their names to.

While it may seem entirely unobjectionable for municipal officers, in preparing the warrant, to correct what seems to be obviously faulty grammar or misspellings in a petitioned article, they have no obligation and no power to do so, and should print the article exactly as it was written when filed with the clerk. If voting is to be by open town meeting, the meeting could be asked to amend the article as necessary to correct the error, although town meeting could not legally amend a petitioned ordinance.

## **Use of Alternative Articles**

If the petitioned article will be voted upon *by open town meeting*, the municipal officers can always place a second, corrected article that they prepare for the town meeting warrant. Town meeting could then vote to take no action on the problematic article and vote on the municipal officers' corrected version instead. However, alternative articles are not advisable where voting is by secret ballot referendum because of the chance that both will be approved, and because ballots must offer only a “yes” or “no” choice, there is no opportunity to directly ask for a choice among two alternatives.

The alternative article can appear on the warrant immediately before the petitioned article, and information notes after each can explain the origin of each, and the recommendation of the municipal officers.

There will be times when municipal officers will prefer not to submit *any* alternative, and to hope that the petitioned article will die of its own internal infirmities, omissions, or ambiguities. Results cannot be guaranteed, however.

## **Unreasonable Refusal to Honor Petition (Section 2521(4) Procedure)**

It was said above that petitioners can seek relief from a notary public if the municipal officers unreasonably refuse to honor a petition. This is pursuant to 30-A M.R.S. § 2521(4). The validity of a meeting called by notary depends entirely on whether the municipal officer's refusal was reasonable. Any attempt to call a town meeting in the wake of a refusal by the board of selectmen must be a petition directed to a notary for the purpose of calling a town

meeting. (See the earlier discussion on the *Friends of Mitchell Field v. Town of Harpswell* court case.)

The Maine Supreme Judicial Court has said that the whole theory of the New England town meeting has been that the inhabitants of a town could on short notice come together upon all necessary occasions. It is on that basis that 30-A M.R.S. § 2521(4) authorizes a notary to issue a warrant if the municipal officers unreasonably refuse to do so. *Jones v. Sanford*, 66 Me. 585, 590 (1877).

In fact, if application is made to a notary, the notary has no discretion not to issue a warrant calling the requested meeting and including the requested article or articles. In this respect the notary's duty is ministerial, discretionary. The notary is not to hold a hearing nor otherwise decide on evidence concerning the reasonableness or unreasonableness of the municipal officers' refusal. *Southard v. Bradford*, 53 Me. 389 (1866).

Municipal officers who believe they have reasonably refused to honor a petition may apply to a court for a declaratory judgment (one declaring the relative rights of the parties) and an injunction barring the meeting and quashing the notary's warrant, or they may wait to do so only if necessary, depending on the meeting's result.

A meeting called by warrant of a notary public is procedurally the same as a meeting called by the municipal officers. The warrant must be posted in accordance with Section 2521. A moderator must be elected at the beginning of the meeting. A clerk arguably has a statutory duty to attend, and so should be there; if a clerk is nonetheless absent, a moderator should appoint a clerk to serve during the meeting. The municipal officers can choose to attend the meeting and attack the proposal, or they can simply boycott the meeting. There is a chance, after all, that the requested article will not pass, and that would probably end the controversy. If the article does carry, the municipal officers can either go to court or refuse to implement whatever action the article directs or contemplates, thereby forcing others to take the judicial initiative. It can be argued that the better choice is to proceed to court, on the theory that the municipal officers, as a town's chief executive officers, are obliged either to faithfully execute the law or to seek an order overturning the law.

The law is clear that a town meeting called by a notary public is illegal where the municipal officers' refusal of a petition was reasonable. *Allen v. Hackett*, 123 Me. 106, 114 (Me. 1923). Once a court declares a meeting to have been illegal, it follows that any action taken at it is void and a legal nullity.

## **When Town or Plantation is Without Municipal Officers**

Title 30-A M.R.S. § 2521(3) provides that when a town, once organized, is without selectmen, a notary public may call a meeting on the written petition of any three voters. The Forms Appendix contains two form petitions addressed to a notary public. One of these is for use in plantations and towns that elect their municipal officers by open town meeting, and the other is for use in towns that elect their municipal officers by secret ballot.