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February 9th, 2021

RE:HOPE SELECT BOARD/ REQUEST TO INSPECT BALLOTS

Dear Mr. Haffner,

This letter is given to you in response to your inquiry concerning whether the town selectmen have the authority, on their own, and concurrent with state law to allow an inspection of the ballots as you have requested be done.

1. **Are the ballots “public records” under the Maine FOIAA Statute?**

It is pretty clear that the well settled law in Maine is that the ballots are “public records.”

“Such indorsement shall be signed by the ward, town or plantation clerk and by the wardens in cities or voting precincts, or by a majority of the selectmen of towns and of the assessors of plantations. The ballots, check lists and signed statements of officials returned to the city clerk after any city election and all other ballots returned to him shall be preserved by him as a public record for 6 months. The provisions of this section shall apply to all elections, including primary elections and elections for determining initiated and referendum questions.”

Opinion of Justices, 130 A.2d 526, 532 (Me. 1956)

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2. **Does the Maine FOIAA Statute clearly apply to municipalities?**

The short answer is clearly Yes.

“Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business...”
Me. Stat. tit. 1 § 402

3. **Mr. Haffner is a proper party to request such a public inspection.**

“Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record. . . .”

Bangor Pub. Co. v. City of Bangor, 544 A.2d 733, 735 (Me. 1988)

4. **The Town Select Board has a duty to comply with requests regarding public records and has the authority to do under the clear dictates of Maine’s Home Rule Statute:**

Article VIII, part second, section 1 of the Maine Constitution, provides: “The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by the Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality may so act.

Pursuant to section 1, the Legislature enacted the home rule law permitting municipalities to exercise only those powers or functions that the Legislature has the power to grant and has not denied "either expressly or by clear implication."

In summary it is legal and appropriate for the Town to honor this freedom of information request by Mr. Haffner with appropriate safeguards for having it done in public, during regular business hours and at his expense if necessary.

Sincerely,

/s/ JOSEPH M. BALDACCI

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