

Request of House of Representatives,
No. 5942.

OPINION OF THE JUSTICES.

Submitted April 28, 1969.

Answer returned May 21, 1969.

To the House of Representatives:

The undersigned Justices of the Supreme Court submit the following reply to your request for advice included in your resolution adopted April 16, 1969 and filed in this court on April 18, 1969, a copy of which is appended hereto, relating to House Bill 728.

House Bill 728 would amend the charter of the Belknap county recreational area commission established by Laws of 1959, chapter 399. The declared purpose of that act was to provide for a commission to operate, maintain, develop, improve and promote the Belknap county recreational area owned by the county of Belknap. The commission was "incorporated as a body politic and as an agency of the county of Belknap" The bill would change the commission's charter by limiting members of the commission to no more than two consecutive terms, deleting a requirement of annual reports, and requiring a budget to be submitted to the county convention under specified circumstances.

Part I, Article 39th of the Constitution of the State of New Hampshire adopted in 1966 provides that no law changing the charter of a particular city or town shall become effective except upon approval of the voters of such city or town upon a referendum to be provided for in the law.

RSA 21:5 provides that "the word 'town' shall extend and be applied to any place incorporated, or whose inhabitants are required to pay any tax, and shall mean that city, town, ward, or place in which the subject-matter referred to is situate, or in which the persons referred to are resident, unless from the

context, a different intention is manifest.”

You submitted the following questions:

“1. Does the word ‘town’ as used in Part 1, Article 39th of the Constitution of New Hampshire have the same meaning as the statutory definition of the word ‘town’ in RSA 21:5?”

“2. Does the term ‘town’ as used in Part 1, Article 39th include the Belknap County Recreational Commission so that any change in the charter of said commission shall require a referendum?”

In our opinion the Belknap county recreational area commission is not a town within the meaning of Part I, Article 39th of the Constitution, but as the statute creating it states, is a body politic and “agency of the county of Belknap” created for the specific purpose stated in the act. Laws of 1959, chapter 399. That act does not incorporate the inhabitants of the area but simply incorporates the commission. Part I, Article 39th of the Constitution by requiring “approval of the voters of . . . such town” clearly refers only to those subdivisions of government which include “voters.” The answer to your second question is therefore in the negative.

We respectfully decline to answer your first question, an answer to which is unnecessary in view of our answer to your second question.

FRANK R. KENISON.
LAURENCE I. DUNCAN.
EDWARD J. LAMPRON.
WILLIAM A. GRIMES.
ROBERT F. GRIFFITH.

May 21, 1969.

APPENDIX

WHEREAS, there is pending before the House of Representatives House Bill No. 728, An Act relative to the budget and term of office of the Belknap County Recreational Commission, and

WHEREAS, House Bill No. 728 would provide for a change in the charter of the Belknap County Recreational Commission,

an incorporated body politic, by requiring that the budget shall be submitted to the county convention for approval, and by limiting members of the commission to no more than two consecutive terms, and

WHEREAS, RSA 21:5 defines the word "town" as used in the statutes to include any place incorporated or whose inhabitants are required to pay a tax, and

WHEREAS, the constitutionality of House Bill No. 728 has been challenged because of the provisions of Part 1, Article 39 of the Constitution of New Hampshire which require that any law which changes the charter of a town be submitted to the voters of said town upon a referendum, and said House Bill as written contains no provision for a referendum, now therefore be it

RESOLVED, That the Justices of the Supreme Court be respectfully requested to give their opinion upon the following questions of law:

1. Does the word "town" as used in Part 1, Article 39 of the Constitution of New Hampshire have the same meaning as the statutory definition of the word "town" in RSA 21:5?

2. Does the term "town" as used in Part 1, Article 39 include the Belknap County Recreational Commission so that any change in the charter of said commission shall require a referendum?

Be it Further Resolved that the Speaker transmit seven copies of this resolution and of House Bill No. 728 to the Clerk of the Supreme Court for consideration by said Court.