

MAINE STATE LEGISLATURE

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For the Year 1902.

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STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

November 30, 1902.

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OPINIONS.

TENURE OF OFFICE OF THE MEMBERS OF THE BOARD OF STATE ASSESSORS.

The tenure of office of a member of the Board of State Assessors is for the legislative term or period, or multiple thereof. It is not controlled by the date of qualification but by the legislative term, or a multiple thereof, and the qualification of a successor in office.

March, 1901.

To the Board of State Assessors:

Gentlemen:—I herewith submit to you my opinion relating to the tenure of office of the members of the Board of State Assessors, which question had been raised by reason of the election and qualification of Hon. F. M. Simpson as a member of the State Board, to succeed Hon. William C. Marshall who claims that his term of office expires in accordance with the date of the first qualification in his term; to wit, April 2, 1901. William C. Marshall was elected to succeed himself January 7, 1897, and qualified July 7, 1897, for the period of four years.

STATEMENT OF FACTS.

The following parties were elected by the Legislature April 1, 1891 and qualified as such officials on April 2, 1891, under the State assessors act establishing a Board of State Assessors, Chapter 103, Public Laws of 1891:

Otis Hayford, for six years,

Frank Gilman, for four years,

B. F. Chadbourne, for two years.

Frank Gilman deceased and Hall C. Burleigh was appointed by the Governor, March 8, 1892, and qualified the same date, to fill out that portion of Gilman's period of office until the next Legislature, when his successor should be elected and qualified.

Hall C. Burleigh was elected to succeed himself January 19, 1893, for two years, to fill out the balance of Gilman's unexpired term of office. He qualified Feb. 7, 1893.

Hall C. Burleigh was re-elected to succeed himself, for six years, January 3, 1895, and qualified April 3, 1895.

Hall C. Burleigh deceased during his term of office and William C. Marshall was appointed by the Governor June 5, 1895, and qualified June 6, 1895, to fill out the unexpired term of Hall C. Burleigh until the next Legislature when his successor should be elected and qualified.

William C. Marshall was elected to succeed himself January 7, 1897 and qualified July 7, 1897, for four years, to wit: for the remaining unexpired term of Hall C. Burleigh, which term of William C. Marshall expires this winter, to wit: 1901, when his successor should be elected and qualified.

Frank M. Simpson was elected January 3, 1901, for the period of six years, and qualified Feb. 1, 1901, to succeed in office William C. Marshall.

Otis Hayford was elected April 1, 1891, for six years, and qualified April 2, 1891.

Otis Hayford was re-elected to succeed himself January 7, 1897, and qualified April 23, 1897, for six years, and is now serving his second term which will expire in the legislative year of 1903.

B. F. Chadbourne was elected April 1, 1891 and qualified April 2, 1891, for two years.

At the expiration of Chadbourne's term of office George Pottle was elected January 19, 1893, to succeed said Chadbourne, and qualified January 20, 1893, for six years.

George Pottle was re-elected to succeed himself in 1899 and qualified March 31, 1899, for the further period of six years.

The Public Laws of 1891, Chapter 103, establishing the Board of State Assessors, among other things provides as follows:

Section 1. A board of state assessors shall be chosen biennially by the legislature by joint ballot of the senators and representatives in convention, consisting of three members, not more than two of whom shall be taken from the same political party, who shall take and subscribe the oath provided by the constitution of this State, and hold their offices as provided in the following section.

Section 2. The term of office of said assessors under said first section shall be, one for two years, one for four years, and the other for six years, and until their several successors are elected and qualified; and the member having the shortest time to serve shall be chairman of the board. Said State assessors shall be elected after the approval of this act by the legislature now in session, and shall hold their first meeting at the State capitol within thirty days thereafter. The assessors thereafter elected shall hold office for the term of six years each, excepting elections made to fill unexpired terms.

Section 4. Any two of said board shall have authority to transact all business appertaining to their office, but all three must be duly notified of each and every meeting for the transaction of business. In case of the death, resignation, refusal or inability to serve of any one or more of said board, the Governor, with advice and consent of the council, shall, as soon as may be, fill such vacancy by appointment, and the assessor so appointed shall hold said office until his successor is elected by the next legislature and qualified. Said board shall hold a meeting at the State capitol on the first Tuesday of each month.

The contention in this case on the part of William C. Marshall is, that since the original State assessors act which was enacted by the Legislature, in March, 1891, provided that one of the board of assessors should be elected for two years, one for four years and one for six years, and thereafterwards a member should be elected annually for the period of six years, except as provided, to fill out unexpired terms, that said Hayford, Gilman and Chadbourne having been elected on April 1, 1891, and qualified on April 2, 1891, fixes the absolute date from which everafterwards the official period of the several members of the board of assessors should be computed, and that from said date, to wit: April 2, 1891, full and complete years of twelve months each should be reckoned in computing the term of office; in other words, that the term of office of each and every assessor on said board, when it did expire, would fall on April 2d; and since the term of office to which Mr. Marshall was elected January 7, 1897, for a period of four years, and qualified July 7, 1897, expires this year, that it expires on April 2d, and that he is entitled to hold the office and receive the salary therefor to said April 2, 1901.

OPINION.

The real questions which confront us, relate to the limitation of the tenure of office of Mr. Marshall, to wit: is Mr. Marshall's term of office controlled by the exact date of his election, by the exact period of four years of 12 months each, commencing on the second day of April, 1897, or by the election and qualification of his successor, Mr. Simpson in 1901, during which year and at some definite point, the official term of Mr. Marshall expires beyond a doubt.

First: Does the date of election alone have any bearing as to the exact day and date when Mr. Marshall's official term as State assessor expired? I think not. His election marked a period of time, to wit: a legislative period of time or multiple thereof during which he was to serve as such official when he qualified to act in that position. Hence the precise date of Mr. Marshall's election can have no bearing on the question before us further than to fix the legislative unit or multiple thereof of his official term.

Second: Does the date of qualification of the first board of State assessors, to wit: April 2, 1891, taken in connection with the provisions of the act establishing the board which provides that "the term of office of said assessors under said first section shall be one for two years, one for four years, and the other for six years and until their several successors are elected and qualified," and "the assessors thereafter elected shall hold office for the term of six years each, excepting elections made to fill unexpired terms," measure the exact period in months and days of the time of Marshall's official tenure as State assessor to which he was elected January 7, 1897, for the period of four years? I think not and for the following reasons: As a matter of legislative history the act providing for a board of State assessors was placed before the legislature in the very early part of the session of 1891. For various reasons it was delayed and refused passage until the very last of the session, and was finally enacted approved, and became a law March 26, 1891.

It is apparent, therefore, from the provisions of the act for electing one assessor for two years, one for four years and one for six years and thereafterwards the election of a member at each Legislature for the period of six years, except as provided in case of vacancies, that the Legislature, as well as the authors

of the act, had in mind the legislative unit of two years or a multiple thereof, and not a specific date at which time the member of the board should enter upon his duties and from which date said member or his successor should reckon his official period in years of twelve months each; otherwise the Legislature would have specified the exact date from and to which each member should serve.

Again, how can the date of qualification of the first board, to wit: April 2, 1891, be taken as an arbitrary point from which to measure the official period in preference to any other date of qualification occurring thereafterwards? The absurdity of this proposition is apparent on inspection of the dates of qualification of the various members of the board since April 2, 1891. It appears that after the qualification of the members of the first board, to wit: after April 2, 1891, there were no two members who ever qualified on the same date. The earliest date of qualification in any year is that of George Pottle who qualified January 20, 1893, and the latest is that of William C. Marshall who qualified July 7, 1897; all the other dates of qualification fall between these two dates in the several years, showing conclusively that the members of the board never for a moment considered that April 2d, cut any more figure as a marking date of the commencement or expiration of the term of office than any other date of qualification.

To illustrate; suppose that Frank Gilman, who was elected on the first board, had been on account of sickness or other cause delayed in some way from qualifying as assessor until the second day of July, 1891, and the other two assessors had qualified as they did on April 2, 1891. Could it be claimed that following down the line of Frank Gilman every official term of office in that line would commence and terminate on July 2, and that in the lines of Hayford and Chadbourne the official term of office would commence and terminate on April 2d?

Such a construction placed on the act of the Legislature would be absurd, and yet the claim made by Mr. Marshall leads straight to this conclusion.

We have provisions in our laws that fix the exact commencement and ending of official periods such as that of the Governor of the State, and other provisions that provide for officials to be elected biennially by the joint vote of the Senate and House of

Representatives. In the case of the Governor, his term of office absolutely expires by the hands of the clock. In the case of officers elected biennially as provided in the State assessors act, Section 1, which is equivalent to electing for the period of two, four or six years, as provided, the official holds until his successor is elected and qualified, as in the case of the Secretary of State, Attorney-General, Adjutant-General, State Treasurer, etc. Opinion of Justices, 70 Me. pages 590 and 591.

In the latter cases should a contest occur by reason of which the election of such officials should be delayed until the very last of the session of the Legislature, the incumbent would hold over until such officials were elected and qualified. But how about the official tenure of the newly elected official if at the next Legislature an election and qualification should be had at the opening of the legislative session? Beyond any question of doubt or cavil the incumbent would be cut short about three months in his term of office. In other words, it is apparent that the members of the Board of State Assessors are elected on the same basis as the Secretary of State, Attorney-General, Adjutant-General, Treasurer, etc., and that they severally hold their office until the successor of each of them is elected and qualified, and no longer. Hence a prior fixed date of qualification of the officials of this class can have nothing to do with the exact period of service of such official.

We must, then, look elsewhere than under the first and second heads presented, for the controlling principle, as to the tenure of officials elected as provided in the case of State Assessors.

Third: Does the election and qualification of Frank M. Simpson for State Assessor, as successor in office to William C. Marshall, have any bearing on the matter in contention; that is, on the tenure of William C. Marshall's term of office? Unquestionably from the process of elimination thus far pursued, taken in connection with the provisions of the act establishing the Board of State Assessors, the election and qualification of Mr. Simpson is conclusive in the premises. What law, provision or custom of qualification of State officials even if we may go so far, was there to prevent Mr. Simpson being qualified for the position of State Assessor after he was duly elected? Surely none, and since the act creating the Board of State Assessors

does not give exact dates of limitation of the official tenure of office, why could not Mr. Simpson take his seat, as soon as he qualified for the position to which he was elected? Unquestionably he could, but does the act contemplate that the self-same position of assessor may be held by two incumbents at the same time? In no respect whatever. As set forth under the second head, the apparent intention of the Legislature in designating two, four, and six years as the period of official service of State Assessors, was to make the legislative term of two years, or a multiple thereof, the unit of service, but not meaning thereby exact years of three hundred and sixty-five days each.

The act itself so indicates in section two, wherein it provides for the official period of service "and until their several successors are elected and qualified."

Also in section three, which provides in case of appointment to fill vacancies on the Board, that "the assessors so appointed shall hold said office until his successor is elected by the next Legislature and qualified," showing conclusively that it is the election and qualification of the successor that terminates the incumbent's term of office and not some arbitrary date of qualification of prior assessors, nor yet the lapse of two, four or six years of three hundred and sixty-five days each, as the case may be. Hence my conclusion is that Frank M. Simpson on being qualified therefor, after having been elected State Assessor as successor in office to William C. Marshall, became on the day of his qualification the legal State assessor in succession to Mr. Marshall, and on the same day the official term of Mr. Marshall as State Assessor expired.

I may state further that in my judgment Mr. Marshall is entitled to his full four years' salary, and no more, he having been elected for two legislative terms. And the fact that his period of office may be cut short or lengthened a few days by reason of the election and qualification of his successor, does not affect the right of Mr. Marshall to his salary for his full four years.

Respectfully submitted,

GEO. M. SEIDERS,

Attorney-General.