

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1906.

AUGUSTA
KENNEBEC JOURNAL PRINT
1907

The revisions of the statute of 1903 were identical with the revision of 1883 and an examination of the acts of 1905 do not show any change from the conditions existing in the revision of 1903.

In short, the provision for electing county commissioners (except as related to biennial elections) have remained practically unchanged in this State since February 22, 1842, and the court has twice told us that there is a distinction between the filling of a vacancy cause by death, resignation, or removal from the county and a vacancy created by the expiration of a full term. The court has very distinctly said that when there is an election to fill a vacancy of the former class, then the person so elected was to complete only the term which would have otherwise been completed had there been no death, resignation or removal from the county.

You do not inform me whether the ballots cast in Piscataquis county distinctly stated that either of the gentlemen voted for as county commissioner was distinctly voted for as one who was to fill the vacancy caused by the death of Eben M. Bray, but in view of the statements made in Mr. Hayes letter I am forced to believe that if Mr. Blanchard was nominated with a full understanding upon his part and upon the part of the voters in Piscataquis county to fill out the unexpired term of Mr. Bray, then the certificate should be issued to Mr. Blanchard which would expire December 31, 1908, that being the time when Mr. Bray's term would have expired if he had lived. For the same reason I think that Mr. Holmes should receive a certificate of election for six years.

In other words, I think that the action of the governor and council with reference to this certificate of election should be based upon the provisions of R. S., chapter 80, section 3, rather than upon section 2 of the same chapter.

BONDS OF PUBLIC OFFICERS.

In November, 1906, an inquiry was submitted to us from the Secretary of State as to whether the bond for clerk of courts in Cumberland county may be signed by an indemnity or surety company instead of by individual surety and if so in what manner.

On November 27, 1906, opinion was rendered as follows:

Chapter 81, section 2 of the R. S. requires the clerk of courts before entering upon the discharge of official duty to give bond to be lodged in the office of the treasurer and approved by the governor and council, in the sum of \$8,000 with two or more sureties and upon the conditions mentioned in that section.

Chapter 49, section 119 of the R. S. provides that companies duly incorporated and organized for the purpose of transacting business as surety on obligations of persons or corporations, and which would bring itself within certain conditions may be accepted "as surety upon the bond of any person or corporation required by the laws of the State to execute a bond;" and the same section further provides "it being the true intent and meaning of this section to enable corporations created for that purpose to become surety on bonds required by law." You will also notice that such a company bond may be accepted as sole surety providing the surety company can furnish satisfactory evidence of its ability to provide all the security required by law, but a provision is made that in the discretion of official authority to approve such bond other surety or sureties may be required.

From these provisions I do not hesitate in saying that I believe a bond presented by a clerk of court with an indemnity company as surety would be sufficient, providing of course the indemnity company can meet the provisions to which I have referred.