

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

AUGUSTA

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1910

OFFICE OF THE ATTORNEY GENERAL,
WATERVILLE, MAINE, January 25th, 1909.

Subject: Railroad Commissioners; Appointment of
clerk and assistant clerk, R. S. Chap. 51, Sec.
48.

Hon. Bert M. Fernald, Augusta, Maine.

SIR:—I have the honor to acknowledge the receipt of your inquiry as to whether the appointment of the clerk and assistant clerk, to the board of railroad commissioners, requires confirmation by the council, also whether the term of office of such clerk, or assistant clerk, is for a period of four years.

The statute provides that "the governor, on the recommendation of the board," meaning the board of railroad commissioners, shall appoint the clerk and assistant clerk in question. Nothing is said about the council having any voice in the matter either by way of confirmation or otherwise.

That there are appointments to be made by the governor and council, and others by the governor alone, is recognized by the fundamental law of the state, and by our court of last resort in Opinions of the Justices, 72 Me., 542. On page 548 of that report occur these words, after discussing certain appointments:

"These are instances of the offices 'otherwise provided for' where the council have nothing to do in advising or consenting to the appointment or removal. The power of the governor is derived from the statutes conferring it, and from them alone."

In the case of appointment of a clerk and an assistant clerk to the board of railroad commissioners the language is so plain, that there seems no room for doubt but that the legislature intended that the governor alone should make the appointment upon recommendation of the board, and that the council should have "nothing to do in advising or consenting to the appointment."

The other part of your inquiry is, as to whether the term of such clerk or assistant clerk is for four years. Chapter two, section thirty-seven, of the revised statutes provides that :

“All civil officers appointed by the governor and council, whose tenure of office is not fixed by law, or limited by the constitution, shall hold their respective offices for four years and no longer, unless re-appointed.”

In the case of the persons in question they are neither civil officers, nor are they appointed by the governor and council, but only by the governor. Again referring to the Opinion of the Justices, *supra*, we find that

“The general rule is that appointments are by the governor with the advice and consent of the council, and the tenure is during their pleasure. (Referring only to those offices the tenure of which is not otherwise provided for.) The tenure may be at the pleasure of the governor alone, when he has the appointing power without advice or consent of his council.”

The words above enclosed in parenthesis are not a part of the quotation. It would seem, however, from the quotation and the rule therein prescribed, that the clerk and assistant clerk to the board of railroad commissioners would not hold their several offices for the term of four years but “at the pleasure of the governor alone.”

Respectfully yours,

WARREN C. PHILBROOK,

Attorney General.

OFFICE OF THE ATTORNEY GENERAL,

WATERVILLE, ME., May 12, 1910.

Subject: University of Maine—Trustees and their powers.

Hon. Bert M. Fernald, Augusta, Me.

SIR:—I have the honor to acknowledge the receipt of a request from yourself and two members of the Honorable Council, that I should indicate what powers, if any, the Governor and Council may have with reference to the selection or dismissal of any member of the board of instruction of the Uni-