

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1910.

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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-

versity of Maine. It is a matter of common learning that in 1862 the Congress of the United States passed an act entitled "An act donating lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts." The act referred to prescribed the character of instruction, etc., which should be given in these land grant colleges, so called, but did not attempt to prescribe any powers which should be exercised in the various states by the Governor, his Council, or the officers of the college. It was evidently the intention of Congress to leave all these matters of management and control to the states in which those colleges might be instituted or located.

In 1865, by the provisions of chapter 532 of the Private and Special Laws of that year, the State College of Agriculture and the Mechanic Arts was incorporated. In the act of incorporation certain gentlemen were designated as trustees. Section three of the act provided that "the Governor and Council shall at all times have the power, by themselves, or such committee as they shall appoint to examine into the affairs of the college, and the doings of the trustees, and to inspect all their records and accounts, and the buildings and premises occupied by the college." The same section provided for action to be taken by the attorney general under the direction of the Governor and Council against any trustees exercising or attempting to exercise any unlawful powers, or unlawfully omitting to perform a legal duty. In the same way it was provided that action might be instituted against any individual trustee for any cause deemed by the Governor and Council sufficient to disqualify him for the trust.

Section eight relates more particularly to the selection or dismissal of any member of the board of instruction. That section provides as follows:

"The trustees shall appoint such directors, professors, lecturers and teachers in the college, and employ such other persons therein from time to time, as the means at their command may permit for the accomplishment of the objects enumerated and described in the fourth section of the act of congress. Every officer and every person employed shall hold his office or employment at the pleasure of the trustees."

The act under consideration provides in section eighteen that the legislature shall have the right to grant any further powers or to alter, limit or restrain any of the powers vested in the trustees. I have endeavored to examine with some care all of the acts relating to the college from its institution in 1865 to the present time but I do not find any instance where the legislature has attempted to modify the powers of the trustees with relation to the selection or dismissal of any member of the board of instruction. It would seem therefore, that the trustees have absolute and complete control in this matter.

As showing the gradual tendency at least to bring the control of the institution more and more into the hands of the Governor, it may be interesting to note in passing that when the college was first instituted the legislature provided that the first vacancy in the board of trustees should be filled by a joint ballot of the two branches of the legislature; that the second vacancy should be filled by the trustees and that all succeeding vacancies should be filled alternately by the legislature and by the trustees. This method of procedure continued until 1867 when by the provisions of chapter 362 of the Private and Special Laws of that year the number of trustees was reduced to seven and the appointment of new trustees was left to the Governor with the advice and consent of the Council, but the trustees had the right to nominate candidates for appointment by the Governor and Council. This somewhat peculiar method continued until 1874 when by the provisions of chapter 194 of the Public Acts of that year the legislature swept away all the previous powers of the trustees to perpetuate their own body and declared that "all vacancies occurring in the board of trustees of the State College of Agriculture and Mechanic Arts shall be filled by the Governor with the advice and consent of the Council."

Thus we see as before suggested that the legislature is gradually although indirectly, placing the control of the State College in the hands of the Governor more than formerly, by this right to appoint its trustees.

Respectfully yours,

WARREN C. PHILBROOK,

Attorney General.