

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

**PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS**

FOR THE TWO YEARS

JULY 1, 1926 - JUNE 30, 1928

PUBLIC DOCUMENTS, 1926-28

(Explanatory Note)

Three reports in this volume cover periods in variance with the given biennium. They are as follows:

1. The report of the Attorney General covers the period from 1924 to 1928.
2. The report of the Bangor State Hospital covers the period from 1919 to 1928.
3. The report of the department of Inland Fisheries and Game covers the fiscal year ending June 30, 1928. No printed report was made for the fiscal year ending in 1927.

STATE OF MAINE

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

JUNE 30, 1928

June 29, 1928.

Hon. Ralph O. Brewster, Governor of Maine, Augusta, Maine.

DEAR GOVERNOR BREWSTER: In answer to your request for the "form of procedure in relation to filling a vacancy caused by the death or resignation of a Judge of Probate", this Department respectfully calls your attention to the following:

Section 7 of Article 6 of the Constitution of Maine, is as follows:

"Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in at the biennial election, on the second Monday of September, and shall hold their office for four years, commencing on the first day of January next after their election. Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid, at the September election next after their occurrence; and in the meantime, the Governor with the advice and consent of the council, may fill said vacancies by appointment and the persons so appointed shall hold their offices until the first day of January thereafter."

This provision of the Constitution is supplemented by Chapter 6, Section 23 of the Revised Statutes, which provides that:

"*****in case vacancy occurs in any office which is to be filled at the next biennial state election, for which no nomination has been made at the primary election held on the third Monday in June of the same year, a special primary election shall be ordered by proclamation of the governor, at such date as he deems best, conforming as near as may be practicable to the provisions of this chapter, but in that event the governor in said proclamation shall fix the time within which nomination papers shall be filed and the time for transmitting to town clerks lists of candidates proposed for nomination and the time within which and when the returns shall be received and the result declared. If the time is insufficient therefor said nomination may be supplied in the manner provided in section twenty-two." (Section 22 provides for filling vacancies by convention of delegates or by class committees.)

Chapter 67, Section 3 of the Revised Statutes, also states that Judges of Probate are "elected or appointed as provided by the constitution." Their election is effected and determined as is provided respecting county commissioners, and the section relating to county commissioners is to be found in Revised Statutes, Chapter 83, Section 3, which reads as follows:

"When no choice is effected, or a vacancy happens by death, resignation or removal from the county, or at the expiration of any present term of office at the end of any year in which no biennial election is held,

the governor, with the advice and consent of the council, shall appoint a person to fill the vacancy, who shall hold office until the first day of January after another has been chosen to fill the place."

Under this provision of the constitution, it seems clear that where a vacancy has occurred in the office of the Judge of Probate by either death or resignation, the vacancy must be filled by the people at the general election next following.

It is the duty of the Governor in the meantime, with the advice and consent of the council, to temporarily fill the vacancy by appointment, the appointee to hold office until the first day of January following the election of a successor by the people.

Respectfully yours,

RAYMOND FELLOWS,

Attorney General.

August 23, 1928.

Hon. Ralph O. Brewster, Governor of Maine, Augusta, Maine.

DEAR GOVERNOR BREWSTER: In answer to your inquiry as to whether a member of the Board of Registration appointed to fill a vacancy caused by death or resignation of the incumbent, holds for the full term of four years, or whether the appointment is to fill the vacancy in the term, I call your attention to the opinion of the court in *Wilson, Attorney General v. McCarron*, 112 Me. 181, where our court holds that when an office is created by statute which provides that it shall be filled by election or appointment for a term of years and is silent in regard to the time when the term shall commence, and there are no special provisions for filling a vacancy in the office, the term of office begins when the appointee is appointed and qualified and he holds office for the full term, unless sooner removed.

In other words, the court holds that unless the statute otherwise provides, "there is a vacancy in the office and not in the term."

The statute in question, Revised Statutes, Chapter 5, Section 6, provides that a member of the Board of Registration shall be appointed and commissioned by the Governor, by and with the consent of the council, for a term of four years. There is no special provision for filling a vacancy in the office so filled by