

MAINE STATE LEGISLATURE

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December 24, 1936

Honorable Lewis O. Barrows
Secretary of State
Augusta, Maine

Dear Sir:

Under date of December 22, you submitted to this office a copy of Council Order Number 517, passed by the Governor and Council on December 27, 1935, which Council Order depends ~~for~~ ~~authority~~ for its authority upon Section 103 of Chapter 2 of the Revised Statutes. The Order declares an emergency and makes provision for the payment from the Contingent Fund of sums of money to match money provided by the Federal Government to provide Old Age Pensions.

In your letter you ask the opinion of this office as to whether this Order remains in full force and effect at the termination of the present administration.

A careful search of authorities finds nothing apparently in point but few of our states have a council to advise the governor and in those states where there is such a body the question you propose seems never to have reached a court of last resort. However, based upon practice in the State of Maine, there would appear to be no doubt that the Orders issued by the Governor and Council remain in full force and effect until revoked and the power of revocation is one attaching to the office and not to the persons who may be occupying the office.

It has been held that the power of the Governor attached to the office and not the man. It has also been held that where the power of appointment is in the Governor and there is no provision of law relative to dismissal, the Governor then has the power of dismissal and such power of dismissal is not alone incident to the person who happens to be Governor and makes the appointment, but is passed along to his successors who may exercise such power or dismissal. The analogy, of course, applies to a state such as Maine where the power of appointment and confirmation is in the Governor and Council jointly.

Under the set-up in Maine it would work untold hardship to apply any other rule than that the Orders of one administration are effective until revoked by such administration or a succeeding one. Surely it will not be contended that all of the multitudinous Orders passed by a Governor and Council relating to the conduct of the State's affairs expire automatically with the termination of an administration. It has never been questioned that warrants drawn up on the State Treasurer by an administration

remain effective after the termination of such administration, but were we to concede that the power of the Governor and Council and their authority died with the termination of the administration all warrants then outstanding would require the approval of the incoming administration in order to give them validity. Such a position has never been taken.

The institutions of our State are in many particulars directed by Orders passed by the Governor and Council, and it has been the unfailing practice that such Orders continue in effect until revoked and do not expire with the administration which happened to pass such Orders.

It sometimes happens that a Governor resigns or dies while in office, and, automatically, the President of the Senate becomes Acting Governor and endowed with all the power and authority of that office. It has happened in the State of Maine within quite recent years that a Governor has died in office and it was not then thought necessary for the Acting Governor and the Council to re-pass Orders which had received a passage prior to the death of the Governor.

It has also happened that the personnel of the Council has changed where a Councilor has died and another appointed to fill out the unexpired term. In such an instance it has never been deemed necessary to re-pass Orders which received passage prior to the death of such Councilor. Innumerable instances might be cited concerning the practice in the State of Maine which heretofore, in recent years at least, have never been questioned.

Applying, then, the principle laid down in the case which provides that the power of the Governor does not terminate with the expiration of a term, but is a continuing power in the office attaching to the office and not to the man; following also the precedent in the State and realizing the inevitable confusion which would result were the actions of a Governor and Council not to control until such time as revoked by such Governor and Council or succeeding administrations, the rule seems plain that an Order passed by the Governor and Council on December 27, 1935, will remain operative until revoked by the present administration or a succeeding administration.

Very truly yours,

Clyde R. Chapman
Attorney General