

MAINE STATE LEGISLATURE

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October 29, 1942

Frank A. Farrington, Deputy Attorney General

William D. Hayes, State Auditor

In re Qualification - State Auditor

With reference to your memorandum, dated October 28th, 1942, it would seem that the situation is as follows:

Article IX of the Constitution provides that oaths or affirmations shall be taken and subscribed by the Governor and Councillors before the presiding officer of the Senate in the presence of both Houses of the Legislature, and by the Senators and Representatives before the Governor and Council, and by the residue of said offices (referring to the first sentence of Article IX) before such persons as have been prescribed by the Legislature.

Section 56 of Chapter 2 of the Revised Statutes of 1930, requires Justices of the Supreme Judicial Court and of the Superior Court, Attorney General, Secretary, Treasurer, Adjutant General, and Quartermaster General, shall take and subscribe the oath or affirmation required by the Constitution before the Governor and Council when in session, and in their recess, before any two members of the Council; and every other person elected or appointed to any civil office shall take and subscribe the oath before any one member of the Council or before any magistrate commissioned by the Governor for that purpose, except when the Constitution otherwise provides. By Section 55 of Chapter 2 of the Revised Statutes of 1930, a Dedimus Justice is designated as one before whom the oaths required by the Constitution to qualifying civil officers may be taken and subscribed.

From the above it would follow that the State Auditor or any other official not specifically named in Section 56 can qualify by taking and subscribing the oath before any one member of the Council, or before a

William D. Hayes, State Auditor
October 29, 1942
Page 2

Dedimus Justice. Taking the oath before the Governor and Council satisfied the requirement of taking before any one member of the Council.

On this basis, it would seem that you are properly qualified, based on the statement of facts in your memorandum.

I fail to see the need of the proposed revision of Section 58 mentioned in the last paragraph of your memorandum, for the reason that it seems to me it would result in tying down all officials of the State elected by the Legislature to qualifying before the Governor and Council, which conceivably might, under some circumstances, be inconvenient if nothing more.

Deputy Attorney General

FAF:gh