

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

It is apparent that the language of the original Bang's Disease Act, requiring that "when any owner of cattle in the state shall signify in writing his willingness to place his herd under the supervision of the department of agriculture for the eradication of Bang's disease," is still in effect and that the legislature must change the law before it will be safe to attempt any criminal prosecutions.

If R. S., Chapter 40, Section 4, did apply to Bang's disease, it did not apply on the facts you have cited, because there is nothing therein to show that either Dr. Edwards or Dr. Fine was an agent of the Commissioner of Agriculture at the time they went to the farm.

For the convenience of yourself and others who have occasion to use the little pamphlet issued in November, 1943, and containing the laws, rules and regulations pertaining to live stock sanitation, I would suggest that before a new edition is issued, you submit your proof to this department for editing, so that we can correctly identify each section of the statutes quoted therein.

FRANK I. COWAN
Attorney-General

September 7, 1944

Hon. Harold I. Goss
Secretary of State
Augusta, Maine

Dear Sir:

I have before me the letter of Frank C. Creteau asking authority to use stickers to place the name of a candidate for county treasurer on the York County ballots. R. S. c. 16, §4, provides that if a vacancy occurs in the office of county treasurer, the governor may appoint a treasurer who shall serve "until the first day of January following the next biennial election, at which said election a treasurer shall be chosen for the remainder of the term, if any; but in any event he shall hold office until another is chosen and qualified."

The governor has made an appointment under the provisions of this section and the present incumbent is to hold office until the first day of January, 1945, or "until another is chosen and qualified." Obviously, the latter language provides for continuing said appointed incumbent in office until another treasurer is chosen and qualified by due process of law. The question before us is whether or not there is any legal machinery for providing at this late date that any candidates' names may appear on the ballot.

R. S. c. 8, §16, as amended by P. L. 1941, c. 127, contains the following language: "Stickers shall not be counted unless used to fill a vacancy or correct an error in the printed ballot." The words "fill a vacancy" must of necessity apply to an actual vacancy in an office. In York County there is no vacancy since the governor has filled the office and there is a provision of the statute, as above quoted, for keeping the office from going vacant pending the next regular election at which candidates can be chosen by the respective parties and the election can be held in accordance with the general laws of the State.

R. S. c. 7, §30 and sections following, provides a method "for the purpose of filling vacancies as provided in section 23 of this chapter, and nominating candidates not included in section 1 of this chapter." Section 23 of chapter 7 has to do with the case of a candidate who has been duly nominated in the primary and who has died before the date of the gubernatorial election, or has withdrawn in writing, or has otherwise forfeited his nomination.

This section cannot apply in the instant case, because we have an instance of an incumbent who has died in the middle of his term and in whose place an interim appointment has been made.

R. S. c. 7, §1, above referred to, speaks of "candidates for any state or county office." I think it is unnecessary to state that the office of county treasurer is a "county office," so R. S. c. 7, §30 does not refer to that office.

I find no other provision in our laws for electing a county treasurer to fill out the term of office of a deceased county treasurer unless the death occurs a sufficient time before the primaries so that names can be placed on the ballot in the regular and formal manner set up by the Legislature.

I have to advise you that you have no authority to comply with Mr. Creteau's request.

Very truly yours,

FRANK I. COWAN

Attorney-General

September 8, 1944

Harry V. Gilson, Commissioner

Education

I have your memo of August 30, in regard to the application of §54-A, P. L. 1943, c. 300. The interpretation that has been given uniformly to this statute is that *it protects a public employee of the State, or a subdivision thereof, for a period equal to the duration of his term of employment.* This rule, however, would apply only to executives who are serving a term defined by statute. We have held that we can protect them during the term of office to which they were appointed, or for which they were elected and no longer. Even then we have found that in some cases it has been necessary to hold that the incumbent of the office has, by entering the Federal service, abandoned his employment thus creating an actual vacancy even though the abandonment was involuntary on his part. In brief, we have applied the statute to all persons who were employees without a term and to all employees who were under the Personnel Law protection and, so far as possible, to contract employees and to executive heads, although we have had to recognize that contract employees and executive heads are exceptional cases and oftentimes cannot be classified in such a way that their cases can be treated otherwise than on individual merits.

Considering the matter from the above point of view, we feel that a school teacher hired from year to year on contract should be employed for a period after his return, not less than the unfulfilled portion of his contract period.