

# MAINE STATE LEGISLATURE

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November 16, 1944

To F. K. Purinton, Executive Secretary to the Governor  
Re: Tenure, State Liquor Commission \*

. . . You ask to be advised with regard to the tenure of the term of Frank A. Thatcher, who was appointed a member of the State Liquor Commission on August 7, 1944, to fill the vacancy created by the death of Captain Wilbur H. Towle. Mr. Thatcher's appointment was for a full term and the commission to him was for the term of 3 years or during the pleasure of the Governor and Council. This inquiry comes now as a result of representations being made to your office that such appointment should have been for the unexpired term of the prior incumbent.

I am of the opinion that Mr. Thatcher's appointment for a full term was proper and in accordance with the statute. Chapter 268, P. L. 1933, creating the Commission, reads as follows:

"Sec. 1. State licensing board; and appointment thereof. There is hereby created a state licensing board which shall consist of 3 members to be appointed by the governor, with the advice and consent of the council, to serve for 3 years or during the pleasure of the governor and council. The governor shall designate one of the members to be chairman of the board and not more than 2 members of the board shall belong to the same political party. Any vacancy shall be filled by appointment for a like term." (Emphasis supplied.)

By Chapter 300, Section 1, of the Public Laws of 1933 (special session held November, 1934) it was provided that the board should thereafter be known as the State Liquor Commission.

We have here a clear and explicit provision that vacancies shall be filled "for a like term". The only term that precedes it, and to which this sentence has reference, is that members appointed are "to serve for 3 years or during the pleasure of the governor and council". "A like term" would be a similar term or a term of the same tenure. It certainly can not be held to mean "for the unexpired term".

I may add that where there has been some conflict in the courts, the statute failed to specify the duration of the term of the officer appointed to fill a vacancy. But even in those cases the weight of authority is that the person so chosen holds for the full term and not the unexpired term. Throop on Public Officers, page 319. See also 43 Am. Jur., page 17, §159.

Your next inquiry is whether the phrase "or during the pleasure of the governor and council" means in effect that a member "may be removed by the Governor and Council for cause after a public hearing".

\*NOTE by H.C. This opinion was not send and by Mr. Breitbard's direction was not at that time put into the Opinion Book. He felt it much safer to remind the Governor and Council that arbitrary dismissals would result in its being impossible to get men of any standing and ability to accept office. It is now (1958) included as possibly useful some time to this office only.

I am informed that on a prior occasion when that question arose, the procedure adopted was to assign cause and hold a public hearing. While the Governor and Council are at liberty to follow that procedure, they need not do so, in my opinion. I think that the interpretation to be given to this provision is that the member may be removed within the term of 3 years by the Governor and Council at their pleasure; that the intent was to provide for a speedy and summary removal by the appointing power and thus dispense with the delay attending removal proceedings and sometimes resulting in protracted hearings.

"According to the overwhelming weight of authority the legislature of a state has complete power to remove officers from office, whether they be elective or not, or to authorize their removal, without notice or hearing, subject only to such limitations as the constitution of the state may impose as to the particular office. . . ."

99 A.L.R. 336.

Especially is this true where the legislature creates the office and provides for its tenure and the method by which it is to be determined. 99 A.L.R. 337.

"The general rule as to offices created to be filled by appointment is that if the legislature does not designate the term of the office, the appointee will hold only during the pleasure of the appointing power, and may be removed at pleasure, at any time without notice or hearing. So, too, statutes sometimes provide with respect to certain officers that they shall within the tenure prescribed be removable at pleasure, which, of course, means without requiring any cause for such removal. Such a statute is valid in the absence of any constitutional inhibition against it." (Emphasis supplied.) 43 Am. Jur. 32.

In Londonvv. City of Franklin, etc., 118 Ky. 105, the court had under consideration a statute which provided for the appointment of certain officers "for a term of 2 years by the city council, but may be removed at the pleasure of the city council." The court said:

"The language of the statute is that the officers named may be removed at the pleasure of the city council. These words have a well defined legal meaning. The right to remove at pleasure is an entirely different thing from the right to remove for cause. To hold that the statute only authorizes the council to remove for cause would be to deny the words used by the legislature their ordinary meaning."

The Constitution of Maine does not prohibit the legislature from providing for the removal of civil officers at the pleasure of the appointing power from offices created by it, even though the term be fixed by the same statute. See Opinion of the Justices, 72 Maine 542. In accordance with the foregoing authorities, I am inclined to the view that a member of the Commission may be removed summarily without assigning cause and without a hearing.

AB:c

Abraham Breitbard, Deputy Attorney General