

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

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December 5, 1945

To Hon. Horace Hildreth, Governor of Maine

Re: Passamaquoddy District Authority

I have examined the letter of Ralph C. Masterman, one of the directors of this Authority, dated November 29th, and he seems to be disturbed about the appointments to the Authority of directors for definite terms. The statute, Chapter 65 of the Public Laws of 1945, Section 3, provides that a board of seven directors of the Authority shall be nominated by the Governor and appointment shall be made with the advice and consent of the Council, one director being designated by the Governor as chairman. The term of each director shall be seven years and until his successor has been chosen and qualified, "except that the initial terms of the directors shall be respectively: 1, 2, 3, 4, 5, 6, and 7 years. The initial term of the Chairman shall be 7 years and the Board of Directors shall determine by lot the initial terms of the other directors." Thereafterwards, appointments are to be made at the expiration of these terms for seven years, except in case of vacancy by resignation, death, etc., when the appointment shall be made for the unexpired term.

I have examined the nomination of the directors and their commissions, which were issued by the Governor, and find that there were six persons appointed and the term that they were to hold office was provided for in each case. Under the statute, however, the Governor could only fix the term of the chairman at seven years. The terms of the others, you will notice, were to be determined by the other directors at a board meeting after their appointment and qualification. Consequently, the fixing of the number of years that each was to serve, other than the chairman, was not in accordance with the statute; and in that respect I must agree with Mr. Masterman.

I am of the opinion, however, that the appointments by the Governor are not affected by the fact that the term for which they were to hold office was specified. The appointments and the commissions issued are legal and valid, in so far as they are appointed directors of the Authority. The additional provision fixing the term must be treated as surplusage. Being legally appointed as directors, they may now meet as a board and by lot fix and determine the term that each is to serve. When this is done, they should send an attested copy of the meeting to the Secretary of State, so that he will have a record of the expiration of their terms. While there is no provision for this latter procedure, I believe it to be advisable that they shall do so.

I also desire to bring to your attention the fact that only six directors have been appointed to date, whereas seven are provided for.

ABRAHAM BREITBARD
Deputy Attorney General