

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: University of Maine

The chairman of the Council has requested that I advise you whether a trustee of the University of Maine is by law required to be a resident of the State.

I find that the act establishing the college, then under the name of State College of Agriculture and Mechanic Arts, Chapter 532, Private and Special Laws of 1865, provided in Section 4 thereof that "No person shall be a trustee who is not an inhabitant of this State, nor anyone who has reached the age of seventy years."

I am of the opinion that the term "inhabitant," as used in the Act of 1865, is synonymous with domicile or legal residence, and implies a permanent abode in the State of Maine.

I also find, however, that "all vacancies occurring in the Board of Trustees shall be filled by the Governor and Council *on the nomination of the trustees. In case the nomination by the Trustees shall not be confirmed by the Governor and Council, the Trustees shall make another nomination, and so on until a nomination shall be confirmed.*" (Emphasis mine.) Chapter 362 of the Private and Special Laws of 1867.

ABRAHAM BREITBARD
Deputy Attorney General

December 6, 1945

To Hon. Frank E. Southard, Chairman, Public Utilities Commission

You have orally inquired from this department whether George E. Hill, a member of the Public Utilities Commission, who was filling an unexpired term, which term ended on November 28, 1945, held over until the appointment and qualification of a successor to that office.

I have examined the statutes on the subject, including the act of 1913 (Chapter 129) which created the Commission, and from cases which I have read where the question was considered I am of the opinion that the incumbent would hold over until a successor is appointed and qualifies. See *Bath v. Read*, 78 Maine 280; *Bunker v. Gouldsborough*, 81 Maine 194; *Bowen v. Portland*, 119 Maine 282 at page 286.

In these cases a general rule of law is recognized that the incumbent of an office will hold over after the conclusion of his term, even though there is no express provision in the statute to that effect, unless the statute shows an intent to limit it to the term therein provided.

The department so ruled with reference to the members of the Liquor Commission. See opinion of the writer at page 161 of the Report of the Attorney General, State of Maine, 1943-1944.

Although these two statutes, that is, the one creating the Liquor Commission and the one creating the Public Utilities Commission, differ in that, in the act creating the Public Utilities Commission, the intent was that the term of one of the members thereof should expire every two years (the initial appointments under the Act of 1913 being for 7, 5, and 3 years, and thereafter appointments were to be made for a full term of 7 years) and vacancies by reason of death or resignation were to be filled for the unexpired term of that incumbent, so as to continue the rotation in the appointments in accordance with the original plan, nevertheless it has been held that a statute providing for such an arrangement does not prevent the incumbent from holding over under the rule above enunciated by the courts, since the term of the successor is reduced by the period in which the prior incumbent held over and thus the continuity of the rotation is preserved in that way. See *Hayward v. Long*, 178 S. C. 352; 114 A.L.R. 1130 at page 1144. This principle is recognized by our court in *Bowen v. Portland* at page 286. See also 46 C. J. 971.

On the assumption, thus, that Mr. Hill's term ended on November 28, 1945, in accordance with the design and plan of the Act of 1913 which created the Commission, then his mere holding over would not disturb or disarrange that plan, as his present appointment should be made to expire on November 28, 1952.

ABRAHAM BREITBARD
Deputy Attorney General

December 10, 1945

To Hon. Horace Hildreth, Governor of Maine
Re: Trustees of the University of Maine

Since writing the memo of December 5, 1945, with regard to filling of vacancies on the Board of Trustees of the University of Maine, my attention has been directed by Mr. Edward E. Chase to Chapter 194 of the Public Laws of 1874, which provides that all vacancies occurring in the Board of Trustees of the State College of Agriculture and the Mechanic Arts shall be filled by the Governor with the advice and consent of the Council and by Section 2 provides that all laws inconsistent with this act are hereby repealed.

I may say that this was enacted as a Public Law and hence does not appear in our Index of the Private and Special Laws; nor does it appear in any Revision since 1874, except in the Revision of 1883, where the general act repealing all public acts not contained in the Revision except those which are specifically preserved by that general act, names this law as one of those thus preserved.

I also find that by Chapter 196, P. L. 1883, an additional trustee was provided for, and among the qualifications for that person it was provided that he was to be a graduate of the college and that he was to be nominated by the Alumni Association and appointed by the Governor and Council. That law also provided that the secretary of the Maine Board of Agriculture was to be included, but that was later repealed and the