

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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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the advice and consent of the Council and by Section 2 provides that all laws inconsistent with this act are hereby repealed.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

Commissioner of Education is, under the Revised Statutes, an ex officio trustee of the Board. Thus at present there are nine members of that Board, including the ex officio member, the Commissioner of Education.

It would thus appear that vacancies are now filled by the nomination of the Governor and confirmed by the Council, except that the Alumni Association trustee is nominated by the alumni.

ABRAHAM BREITBARD
Deputy Attorney General

December 12, 1945

To Earle R. Hayes, Secretary, Employees' Retirement System
Re: Houlton Water Company

This department acknowledges receipt of your memo of December 5th wherein you request an opinion as to whether the employees of the Houlton Water Company are eligible to become members of the Employees' Retirement System of the State. Attached to your memo is a history of the legislation of this corporation, from which it appears that, although it was originally organized as a private corporation, legislation in 1901 by Chapter 464 of the Private and Special Laws authorized the Town of Houlton to acquire all the stock of this corporation so that complete ownership is in the Town of Houlton and its directors are chosen by the inhabitants of the town.

In 1943 by amendment (Chapter 26, P&SL) it was provided that said corporation shall hereafter be deemed for all purposes of taxation a *public municipal corporation*. Evidently this amendment was passed so as to relieve it of taxation in towns outside of Houlton where it maintained poles and transmission lines to supply electricity. Because of the fact that the corporation not only supplied the Town of Houlton with water and electricity, but also a number of additional towns and villages outside of that town, in *Greaves, Collector of the Town of Hodgdon vs. Houlton Water Company*, 140 Maine 158, the Court held that so far as the Town of Houlton was concerned the corporation was to be regarded as a public municipal corporation for the purpose of being immune from tax; but due to the fact that in supplying these outside towns it was in effect engaging in business of a private nature, its poles and transmission lines located in towns outside of Houlton were taxable by those towns.

I do not believe, however, that, if the tax question had not been remedied by the legislature, that would bear directly on the question of eligibility of its employees to join the State Employees' Retirement System, in view of the amendment contained in Chapter 101 of the Public Laws of 1945, by which the "employees of any . . . water district, or any quasi-municipal corporation" of the State may participate in the Retirement System. This amendment, which brought in employees of a water district or any other quasi-municipal corporation, would embrace the Houlton Water Company. I therefore advise you that its employees will be