

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

July 31, 1952

To Honorable Harold I. Goss, Secretary of State
Re: Members of Board of Education

. . . You propound the question: "Do members of the Board of Education as appointed under Chapter 403 of the Public Laws of 1949 hold office during the terms of their respective appointments regardless of the repeal of the section under which they were appointed?"

The decision seems to rest upon a question of legislative intent combined with a reading of the repealing act itself. The first sentence of the repealing act, Chapter 155 of the Public Laws of 1951, is as follows: "The board, as heretofore created by previous enactment, shall consist of ten members." This language, "heretofore created or established", is used throughout our Revised Statutes for the express purpose of *not* vacating any subsisting office when the revision is passed by the Legislature, for, prior to such revision passage, all acts passed prior thereto or inconsistent therewith are repealed by the Legislature. We therefore hold that by the use of this term the Legislature expressed its intention that the incumbent members of the State Board of Education should hold their offices, subject, however, to the changes made in the 1951 Act, which called for a new procedure in appointing their successors. This construction of the 1951 Act also allows the staggered terms set up for the five special appointees on said Board under the original Act of 1949 to be carried over under the new legislation, for otherwise their terms would all end at the same time and there would be no continuity of personnel on the Board of Education. Such construction is nothing more than reading the statutes together, and though the 1949 Act has been repealed, this does not violate the rule of statutory construction known as "*pari materia*". See *Brewer v. Hamor*, 83 Me. 251 at 254.

Then again, assuming that the 1951 Act did vacate the office, these present incumbents still hold their offices, for there have been no successors appointed to succeed them. The law seems to be well settled that though there is no express provision that an officer shall hold over, he will hold over until his successor is elected and qualified, unless there is a legislative intent to the contrary, duly manifest. See *Bath v. Reed*, 83 Me. 276 at 280. There is not one intimation that the Legislature intended to remove the present members from their offices, but all indications are to the contrary.

ROGER A. PUTNAM
Assistant Attorney General

August 5, 1952

To Fred M. Berry, State Auditor
Re: Audit, Town of Dedham

This will acknowledge receipt of your memo relative to the request by qualified voters of the Town of Dedham that your department audit the books of the town.

You ask if your office has a legal right to audit other than the 1951 accounts, inasmuch as that is the last year that has been audited by a public accountant.