

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by the Legislature, for, prior to such revision passage, all acts passed prior thereto or inconsistent therewith are repealed by the Legislature.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 Such construction is nothing more than reading the statutes together, and though the 1949 Act has been repealed, this does not violate the rule of statutory construction known as "*pari materia*".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.

Section 116 of Chapter 80 is that section which provides that upon petition of 10% of the legally qualified voters of any city, town, etc., the State Department of Audit shall make *another* audit.

It is the opinion of this office that the second paragraph of section 116 presupposes a prior audit having been taken for the year which the petition seeks to be re-audited. As a result, your department should not audit the books of the town for any year in which a previous audit has not been made.

You quote Chapter 57 of the Private and Special Laws of 1947, amending Chapter 43, section 5, of the Private and Special Laws of 1927:

“The town of Dedham shall annually pay over to the treasurer of said village corporation out of the taxes collected from the inhabitants and estates within said corporation’s territory a sum equal to 45% of all the town taxes, exclusive of the state and county tax, collected from said inhabitants and estates.”

You then state that the interpretation which has been placed on this statute is that the town pays over to the Lucerne-in-Maine Village Corporation only 45% of actual moneys collected, and you ask if this is a proper interpretation.

A close reading of Chapter 43, P&SL 1927, as amended, shows that in all instances the word “collected” rather than the word “assessed” is used. This office is of the opinion that the interpretation hitherto given to the above quoted section of Chapter 43 is a correct one and that the Town of Dedham should pay to the Lucerne-in-Maine Village Corporation only a sum equal to 45% of all the town taxes collected.

JAMES G. FROST
Deputy Attorney General

August 6, 1952

To Honorable Frederic H. Bird, Councillor, Fifth District

This office has been asked to ascertain what rights a beneficiary under the Maine State Retirement System plan for State Employees has with respect to receiving income upon the death of a retired member under the following circumstances:

The husband retired on May 16, 1952, and died on July 16, 1952, without having made a selection as to his optional allowances permitted under the law.

Chapter 367 of the Public Laws of 1951, section 8, provides that under just these circumstances, where a member dies after attaining eligibility for retirement but before an election becomes effective (here no election was made), benefits payable on his account shall be the same as though he had elected Option 2.

Option 2, found in Chapter 384, section 10 of the Public Laws of 1947, provides that a reduced retirement allowance shall continue after the death of the retired member for the life of the beneficiary nominated by him by written designation duly acknowledged, etc.