

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

schools in any city or town. It must be taken as unquestioned that the Indian children living in Indian Township near Princeton are on the Reservation. This office by opinion of July 19, 1948, said:

"I have checked the Indian Treaties, and I find that in the Maine Resolves of 1843, on page 264, a treaty agreement was signed by a committee appointed by the General Court of the Commonwealth of Massachusetts to treat with and assign lands to the Passamaquoddy Tribe and others connected with them; and in that Treaty they set off Township No. 2 in the First Range surveyed by Mr. Samuel Titcomb in 1794, containing about 23,000 acres more or less, which in my opinion would make this territory a part of the tribal reservation of the Passamaquoddy Tribe."

We think that these considerations can lead to only one conclusion. That is that the legislature has and now does follow a policy of providing for separate education facilities for Indian children living on the Reservations of elementary and secondary school age. This policy appears to have been deviated from in 1928, but to be again reinstated in 1933 and by legislation thereafter to date. These separate facilities are now administered by the Department of Health and Welfare. We conclude that the Department of Education is without authority to expend funds to provide educational privileges for Indian children living in Indian Township.

To more specifically answer your questions,

- 1 a. The Department of Education may not operate a school for Indian children in Indian Township, the operation of such school being the duty of the Department of Health and Welfare.
- b. The Department of Education may not purchase tuition privileges for such Indian children. (See Sec. 364 of Chap. 22, as amended by Chap. 349, Sec. 43, P. L. 1949.)
- c. The Department of Education may not provide transportation for Indian children in Indian Township to a school operated at Peter Dana Point by the Department of Health and Welfare. Transportation is such an essential part of education facilities today that the providing of transportation to Indian children in Indian Township to the Peter Dana Point school is within the jurisdiction of the Department of Health and Welfare.

In answer to the second question, it must follow that since the Department of Education is without authority to expend funds for Indian children in Indian Township any expenditures made by the Department should not be included in the computation of the statement of school expenditures for the assessment of a school tax on whites living in Indian Township.

MILES P. FRYE
Assistant Attorney General

January 5, 1953

To Honorable Burton M. Cross, Governor of Maine
Re: Power of Governor respecting Chairman of Liquor Commission

You have inquired whether you may revoke the appointment of the Chairman of the Maine Liquor Commission and appoint someone else as Chair-

man. There is no thought, we understand, of attempting to shorten the Chairman's tenure as *member* of the Commission.

Section 3, Chapter 57, R. S. 1944, amended by P. L. 1947, Chapter 250, provides:

"The State Liquor Commission, as heretofore established, shall consist of three members to be appointed by the governor, with the advice and consent of the council, to serve for three years and may after notice and hearing be removed for cause by the governor and council. The governor shall designate one of the members to be its chairman and not more than two members thereof shall belong to the same political party. Any vacancy shall be filled by appointment for a like term."

From the foregoing it is evident that while the appointment of a person to the Liquor Commission as a member must be with the advice and consent of the Council, the designation of one of the members to be Chairman is made by the Governor alone.

The general rule is stated in 43 Am. Jur., Public Officers, section 183:

"When the term or tenure of a public office is not fixed by law, and the removal is not governed by constitutional or statutory provisions, the general rule is that the power of removal is incident to the power to appoint."

Applying the general rule to the present occasion, the power to designate one member as Chairman resides in the Governor. It would, therefore, appear that the power to alter the designation remains in the Governor as an incident to his power to make the original designation.

Section 6, Article IX, of the Maine Constitution provides:

"The tenure of all officers, which are not or shall not be otherwise provided for, shall be during the pleasure of the Governor and Council."

This language from the Constitution is construed by the Supreme Judicial Court in a manner that leaves no doubt that the same person who appoints may remove, in the absence of statutory or constitutional restrictions. In 72 Me. 549, the Supreme Judicial Court was asked whether the Governor might terminate the tenure of office of the Reporter of Decisions. The Reporter was appointed by the Governor with the consent of the Council. The Court was of opinion that only the Governor and Council could revoke where the Governor and Council had appointed. Referring to the language of the Constitution just quoted, the Court said:

"The general rule is that appointments are by the Governor with the advice and consent of the Council, and the tenure is during their pleasure. The tenure may be at the pleasure of the Governor alone, when he has the appointing power without advice or consent of his Council. The cases 'otherwise provided for' are those where the appointing power is vested in the Governor alone — and the power of removal being an incident to that of appointment is in his hands, or there is a constitutional limitation upon the conditions and duration of official tenure."

In 125 Me. at 533, the Court refers to a presumption that,

"even if not expressly provided, the power of removal is vested in the same body which appointed."

We have inspected the commission of the present Chairman and find that he was designated Chairman "for the term of his appointment as member thereof . . . unless sooner removed pursuant to law." It is doubtful if this purports to designate him chairman for the entire duration of his membership. If it does, it is ineffective. 91 A. L. R. 1097. There are many cases in which courts have held that the tenure stated by statute controls and no express language in the appointing words can change that tenure.

It is our conclusion that you may designate someone else in the Liquor Commission as Chairman and that, when you do so, any previous Chairmanship will be at an end.

BOYD L. BAILEY
Assistant Attorney General

January 5, 1953

To W. D. Deering, Treasurer, Augusta State Hospital
Re: Safe Deposit Box of Inmate

. . . It seems that one of your patients has a safe deposit box, rental for which is overdue. You ask if you have the authority to have the keys of this safety deposit box turned over to the bank so that the box can be opened in the presence of some interested party in order to ascertain if there are any valuables in the box.

It is our opinion that section 87 of Chapter 164 of the Revised Statutes, as amended, giving the bank authority to open a safety box under such conditions, should be followed. We do not believe that you should intervene in the private matters of a patient, but that it should be done by a legally appointed guardian or under other provision of law.

JAMES G. FROST
Deputy Attorney General

January 15, 1953

To the President of the Senate, and the Speaker of the House
Re: Legislative Research Committee

A question has arisen concerning the tenure of members of the Legislative Research Committee under Sections 23-33, Ch. 9, R. S. 1944, as repealed and replaced by Chapter 392, P. L. 1947. This is whether members of the 95th Legislature appointed to this Committee who did not stand for re-election or who have returned to the Senate after original appointment from the House continue as members of the Committee on and after January 7, 1953, the date of the convening and organizing of the present Legislature.

At the outset it will be proper to point out that the Legislative Research Committee is a creature of the Legislative Branch of our State Government and not of the Executive Branch. This is clearly shown by the appointive powers, functions and duties required by the statute. Ordinarily a legislative committee has no power to sit after adjournment sine die. However, power may be given to a legislative committee to sit during the interim between