

MAINE STATE LEGISLATURE

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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 Chairman. 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 of 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.

Alexander A. LaFleur
Attorney General

BLB/gd