

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

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concerning the tenure of members of the Legislative Research Committee under Sections 23-33, Ch. 9, R. S. 1944, as repealed and replaced by Chapter 392, P. L. 1947.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

sessions where there is duly enacted legislation. This is the purpose of the statutory provisions in question. Ordinarily, one must be a duly qualified member of the Legislature to function as a member of a legislative committee.

A vacancy in an office may exist for many reasons, one of which is that the tenure of an appointee may terminate because he no longer has the *requisite qualifications* for the office. By Section 23 it is clear that only members of the Legislature *may be appointed to membership* on the committee in the first instance. Under Section 24 any vacancy could only be filled by a member of the respective branch of the Legislature. Further, Section 24 speaks of a vacancy arising "in the membership from the senate" and "in the membership from the house of representatives". A lay person could not be included in the "membership" of either body. It should be noted also that under Section 25, XIV, compensation is provided for members of the committee in attendance at meetings, *except when the Legislature is in session*. This latter provision raises a clear inference that members of the committee will be members of the Legislature.

We think also that the first sentence of Section 24 sets forth the term of office for members of the committee who are otherwise qualified.

For the reasons stated, we are of the opinion that one of the requisite qualifications for membership on the Legislative Research Committee is membership in the present Legislature. Where a person originally appointed did not stand for re-election, his membership on the Committee terminated when the present Legislature convened and organized, and a vacancy exists. Further, where a member of the Committee appointed from the House was elevated to the Senate, his membership on the Committee terminated upon his qualification as a Senator, and a vacancy exists. There could be no legal objection, of course, to the appointment to the Committee of a present member of the Senate who was formerly a House member of the Committee.

MILES P. FRYE  
Assistant Attorney General

January 15, 1953

To Honorable Burton M. Cross, Governor of Maine  
Re: Vacancy in Office of Register of Probate, Sagadahoc County

. . . The vacancy created by the resignation of J. Horace McClure to accept the office of Executive Councilor, or more presently by the acceptance and qualification of Executive Councilor, may be filled according to the following procedure.

By Section 27 of Chapter 140, Revised Statutes of 1944, the Judge of Probate is authorized to appoint a suitable person to act as Register until another is qualified in his stead. Article VI, Section 7 of the Constitution of Maine, provides that vacancies occurring in the office of Register of Probate by death, resignation or otherwise shall be filled by election at the September election next after their occurrence, and in the meantime the Governor with the advice and consent of the Council may fill such vacancies by appointment, and the persons so appointed shall hold their offices until the first day of