

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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

January next after election aforesaid. Under these statutory and constitutional provisions, the vacancy in the office of Register of Probate may be temporarily filled by appointment of a suitable person by the Judge of Probate, such person serving until the individual appointed by the Governor and Council qualifies for the position.

In this case Mr. McClure, by accepting and qualifying for the office of Governor's Councilor, thereby vacated his office as Register of Probate. Should he now be appointed and qualify as Register of Probate pro tem., the two offices being incompatible, he would thereby vacate his office as Executive Councilor.

NEAL A. DONAHUE
Assistant Attorney General

January 16, 1953

To Honorable Burton M. Cross, Governor of Maine
Re: Eligibility of Councilor for Appointment to Public Office

This office has been requested to advise you as to the legality of appointing a member of the Executive Council to the Board of Commissioners of Pharmacy.

We draw your attention to Article V, Part Second, Section 4, of the Maine Constitution, and to the last sentence of this section, which reads as follows:

“And no counsellor shall be appointed to any office during the time, for which he shall have been elected.”

There is no question but that a member of the Board of Commissioners of Pharmacy is an office, as it has some permanence and continuity and possesses a delegation of a portion of the sovereign power of the government, to be exercised for the benefit of the public.

For the above reasons it is our opinion that a member of the Executive Council may not be appointed to the Board of Commissioners of Pharmacy.

JAMES G. FROST
Deputy Attorney General

January 30, 1953

To Ernest H. Johnson, State Tax Assessor
Re: Property Tax – Indian Township

In reply to your memorandum of January 5, re the State property tax assessment in Indian Township, please be advised that the Attorney General has rendered an opinion to the Department of Education that the transportation of Indian children in Indian Township is properly within the jurisdiction of the Department of Health and Welfare and not the Department of Education. The expenditure for transporting Indian children in Indian Township made by the Department of Education was included in the statement of expenditures for school purposes in Indian Township furnished to your office by the Commissioner of Education. We think this amount was not properly chargeable to the residents of Indian Township. We understand that of some