

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

It is our opinion that these funds are of such a nature that they may be invested under the provisions of Sec. 11 of Chapter 15, R. S. 1944, relating to the investment of trust funds.

JAMES G. FROST
Deputy Attorney General

February 19, 1953

To Honorable Burton M. Cross, Governor of Maine
Re: Appointments by Governor and Council

Section 1 subsection VI, Chapter 13 of the Revised Statutes of 1944 provides that, subject to the approval of the Governor and Council, the Chief (of the Maine State Police) may designate a member of the State Police to act as his deputy.

With respect to the procedure to be followed by the Governor and Council when approving or not approving the deputy designated by the Chief, it has been asked if

1. The Governor and Council act in concert, having one vote each, in the aggregate totaling eight votes; or
2. If the Governor and Council vote as separate bodies, the Governor having one vote and the Council having one vote (the latter vote being determined according to the majority vote of the members of the Council).

It is the opinion of this office that under the above quoted provision the Governor and Council vote as separate bodies, each having one vote.

The Constitution of Maine provides that the supreme executive power of this State shall be vested in a Governor. The Council advises the Governor in the executive part of government and he, with the Councilors, or a majority of them, may from time to time, hold a council for ordering and directing the affairs of State according to law.

It will be noted that with respect to the usual appointment to public office given to the Governor and Council, such appointment is to be effected by the Governor's first nominating the individual and then appointing with the advice and consent of the Council.

Such appointment has generally been understood to be an appointment by the "executive". This definition of "executive", to mean the Governor with the advice and consent of his Council, can be seen in messages of the various Governors;—Governor Kent, 1835; Governor Dunlap, 1837; Governor Smith, 1831, and others. Opinion of Justices, 72 Maine 548.

Though the "executive" in these instances includes both Governor and Council, it is clearly seen that on the part of each there was exercised a particular power, the nomination by the Governor, the supreme executive, and the appointment by the Governor with the advice and consent of the Council.

Now then, by referring back to the first quoted provision of law, it can be seen that the designation of the deputy is subject to the approval of the "executive", the Governor and Council. Logically following the clear-cut

distinction between the Governor and his advisory Council, we conclude that the approval must be secured of both the Governor as supreme executive and the Council his advisory body. *NOTA*. By constitutional provision in the Commonwealth of Massachusetts, the Governor is President of the Council, but has no vote.

JAMES G. FROST
Deputy Attorney General

February 25, 1953

To H. M. Orr, Purchasing Agent

Re: Leases

We have your memo of February 17, 1953, and attached lease between the Congress Street Corporation and the Maine Employment Security Commission.

This lease, as indicated above, purports to have been executed by the Maine Employment Security Commission and bears the signature of L. C. Fortier, Chairman of that Commission.

The Attorney General and all members of his staff unanimously agree that the time has come when a more correct procedure should be followed in executing leases of grounds and buildings, etc., needed for the proper functioning of the various State departments.

We draw your attention to section 35 of Chapter 14 of the Revised Statutes of 1944, which reads as follows:

“The department of finance, through the bureau of purchases, shall have authority: . . .

“IV. To lease all grounds, buildings, office or other space required by the state departments or agencies.”

It is the intent of this statute to provide that the Purchasing Agent, the head of the Bureau of Purchases, shall execute leases on behalf of the State of Maine. To this effect see memo from this office dated January 28, 1942, from Frank I. Cowan, then Attorney General, to your bureau, in which it was stated that this office could not certify that the Secretary of State was the proper party to execute a lease for quarters to house the Portland office of Motor Vehicle Registration.

We realize that for a long period of time, by custom, such leases have been executed by the department head and approved by you and this office; but the mere fact alone of continued deviation from the law does not in any manner amend the law, and we are requesting that in future leases be executed by the proper party, namely the Purchasing Agent.

We would also recommend that the lease executed by the Maine Employment Security Commission under which it is acquiring new facilities for its Portland office be re-executed.