

MAINE STATE LEGISLATURE

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February 19, 1953

yes

To Honorable Burton M. Cross, Governor of Maine
Re: Appointments by Governor and Council, *vote of 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 or keep 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 approved 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.

Alexander A. LaFleur
Attorney General

jgf/c

See also 125 Me 529