

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

“No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people.”

It is the opinion of this office that Section 10 does not prohibit a member of the legislature from being appointed to fill the vacancy above mentioned, even though the emoluments of said office were increased during the term of such legislator. It seems that the clear intent of Section 10 is to prohibit appointment to any civil office of profit except such office as may be filled by election by the people.

“If the section as originally adopted had any other meaning than that the exception removed elective offices from the operation of the prohibitory clause, the inclusion of the exception was meaningless and surplusage, for the section would then mean that legislators were eligible for appointment except when they obtained their offices by election.”

*Carter v. Commission on
Qualifications of J. A.,*
93 Pac. 2d 140.

The above quotation is from a case decided by the California Supreme Court, which considered the identical problem with which we are faced and in a well-considered opinion decided that the legislator was eligible for appointment to an elective office to fill a vacancy created by the death of a judge.

It should be noted that the Supreme Court of the State of Maine in an Opinion of the Justices, 95 Maine at 588, 589, in discussing the constitutional provision in question, though not considering our immediate problem, makes the bold and strong statement which follows:

“It may be noted, however, that this prohibition does not include ‘such offices as may be filled by elections by the people.’”

Because of the clear wording of the constitutional provision and the cases discussing this point, this office has no hesitation in submitting the above opinion.

JAMES G. FROST
Deputy Attorney General

August 20, 1953

To E. L. Newdick, Secretary to the Seed Potato Board
Re: Balance of Funds

We acknowledge receipt of your letter relative to Chapter 27, Revised Statutes, Sections 127 A-F, in which you ask,

“Assuming that on June 30, 1956, the Board has \$50,000 on hand to pay the balance which it now owes the State, what is the future status of the Board? Can it function as it has in the past, or is new legislation needed to continue?”

Payment of any final balance of the \$100,000 originally granted by the legislature would not affect the continuing existence of the Board and its functions.

JAMES G. FROST
Deputy Attorney General