

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

September 8, 1953

To Hon. Burton M. Cross, Governor of Maine
Re: Removal of Certain Public Officers for Failure to Perform Duties
because of Physical Incapacity.

Highway Commission:

We have searched the statutes relative to the Highway Commission and, strange as it may seem, we fail to find any right granted to the Executive to remove any of the Commissioners for cause. Under Chapter 398, P. L. 1953, where the new chairmanship is set forth, there is a statement that the chairman may be removed for cause, but that Act is not now operative, by its very terms. See Section 2 thereof.

Where the term of an office is fixed and there is no provision for removal, there is no inherent power in the Executive to remove; 43 Am. Jur. 34, sec. 187. Here, by virtue of Section 3 of Chapter 20, R. S. 1944, as amended, the term of office is three (3) years. The rule is otherwise where the term of office is *not* fixed, 43 Am. Jur. 32, sec. 184, and also see Section 6 of Article IX, Constitution of Maine, as follows:

“The tenure of all offices, which are not or shall not be otherwise provided for, shall be during the pleasure of the Governor and Council.”

This is not to say that the Highway Commissioners can hold office during their entire term, regardless of their action or inaction. Their removal, not having been provided for by statute, would be governed by the provisions of Section 5 of Article IX, Constitution of Maine.

“Every person holding any civil office under the State, may be removed by impeachment, for misdemeanor in office, and every person holding any office, may be removed by the Governor with the advice of the Council, on the address of both branches of the Legislature. But before such address shall pass either house, the causes of removal shall be stated and entered on the journal of the house in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defense.”

Harness Racing Commission

By virtue of Section 1 of Chapter 77, R. S. 1944, any member of this commission may be removed for cause by the Governor with the advice and consent of the Council. The issue here presented is whether an absence of some four months due to illness is *per se* sufficient cause for removal from office.

The term “cause”, as used in removal statutes, means legal cause, not any cause that might seem to the removing body to be sufficient cause. The research of this writer has failed to bring to light a single case in the United States where the ground for removal for cause was predicated on mere absence from office due to illness. Negative results are sometimes as indicative as positive findings.

This is not to say that physical incapacity is not ground for removal for cause. Note the words of the Florida court in *State v. Coleman*, 115 Fla. 119, 155 So. 129; 92 A.L.R. 988:

"Incompetency has reference to any physical, moral or intellectual quality, the lack of which incapacitates one to perform the duties of his office. It may arise from gross ignorance of official duties, or gross carelessness in their discharge. It may arise from lack of judgment and discretion or from a serious physical or mental defect not present at the time of election, *though we do not imply that all physical or mental defects so arising would give ground for suspension.*" (Emphasis mine.)

It has been held in Massachusetts that insanity is a ground for removal for cause. *Attorney General v. O'Brien*, 280 Mass. 300; 186 N.E. 570. A reading of this case shows that expert testimony was taken to show that the incumbent of the office was hopelessly insane, *intimating* that temporary insanity might not be sufficient ground for removal.

So many of the definitions of "cause" refer to it in the sense that the cause for removal must specifically relate to and affect the administration of the office so that the rights and the interests of the public are not protected that this writer is led to the conclusion that, to remove a man from office due to illness, you must show that it has been such a protracted absence from the office that it has affected the normal functions of that office to the end that it has not been performed as the legislature intended and the public has suffered as a result.

Where the absentee is merely one of a three-man commission, where all members of the commission are bound to perform and enforce the law equally, where they have picked up the burdens of their absentee fellow-commissioner, and where there has been no complaint of inadequate supervision of harness racing, there would seem to be insufficient grounds to sustain any removal from office.

ROGER A. PUTNAM

Assistant Attorney General

September 15, 1953

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Hearings without Petition

In response to your memo of September 10, 1953, we would say that under that provision of Section 5 of Chapter 33 which states that the Commissioner may investigate the conditions adversely affecting the fish in any waters in the State, the Commissioner may have a hearing without being petitioned therefor by the municipal officers or citizens or county commissioners.

JAMES G. FROST

Deputy Attorney General

September 15, 1953

To Roland H. Cobb, Commissioner of Inland Fisheries and Game

Re: Correspondence with James Briggs

We have your memo of September 10, 1953, attached correspondence from