

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

which new rules and blanks, or amended rules and blanks shall, when approved by the supreme judicial court or a majority of the justices thereof, take effect and be in force in all courts of probate and insolvency.

The expenses of such commission or commissions shall be reported to the governor and upon the approval of the same by the governor and council, they shall be allowed and paid in the same manner as other claims against the state."

The elevation of Judge Randolph Weatherbee to the Superior Court and the death of Judge Carroll Chaplin have created two vacancies in the commission appointed by Frederick Payne, April 11, 1952. The question is now asked as to the procedure in filling the said vacancies.

Appointments to the commission are personal to the Governor, and vacancies occurring due to death or resignation of members may be filled by appointment by the Governor of a person qualified to carry on the duties contemplated by the statute. The only limitation in making the appointment is that contained in the statute, that the commission be composed of 3 judges and 2 registers of probate.

It is the opinion of this office that petition by all probate judges that a commission be appointed would indicate that there is a necessity for new rules and blanks or amendments to existing rules and blanks, the last rules of practice and procedure having been approved in 1916. We would add that the Chief Justice of the Supreme Judicial Court feels that, the request having been made, then the work of the commission should be completed.

JAMES G. FROST
Deputy Attorney General

November 4, 1953

To Hon. Burton M. Cross, Governor of Maine
Re: Contingent Account

Section 24 of Chapter 14, R. S. 1944, as amended, provides:

"The governor, with the advice and consent of the council, may allocate from the state contingent account amounts not to exceed in total the sum of \$450,000 in any fiscal year."

From the foregoing it is obvious that the Governor stands above and apart from the Council and without his consent or agreement that an amount of money should be allocated from the contingent account the advice and consent of the Council is not necessary. It therefore appears that if, in his discretion, the Governor does not desire to appropriate money to a certain amount, the Council cannot force him to do so, as they would be transcending their powers.

ROGER A. PUTNAM
Assistant Attorney General