

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

When the Legislature has withheld its sanction for bringing such action, it is a rejection of the claim, and such claim cannot be considered any longer as an obligation of the State. Another Legislature may, upon such facts as are presented to it, if it sees fit, entertain such claim and give consent to the State's being made defendant. Unless and until it does so, such a claim should not be entertained as a valid obligation of the State.

In this case the Legislature has rejected the claim and refused the requested permission to bring suit. . Thus, the claim should not be further entertained. To recognize this claim further, by lowering the dam to appease the claimant, would seem to be in disregard of our highest tribunal, the Legislature, which has heard the claim and denied it.

NEAL A. DONAHUE
Assistant Attorney General

December 2, 1953

To Hon. Burton M. Cross, Governor of Maine
Re: Chairmanship, State Highway Commission

This office has been asked for an opinion relative to the phrase, "vacancy . . . in the office of chairman," as seen in Section 2 of Chapter 398 of the Public Laws of 1953. The fact situation which gives rise to the question is as follows:

On July 2, 1952, Mr. Lloyd B. Morton, a member of the State Highway Commission, was elected chairman of that Commission for the ensuing year. Mr. Morton's term of office as a member of the State Highway Commission expired on December 7, 1952, and he was re-appointed for a three-year term ending December 7, 1955. On December 3, 1952, the Highway Commission confirmed its action taken on July 2, 1952, to continue Mr. Morton as chairman of the State Highway Commission until the first meeting of the State Highway Commission to be held in July, 1953, "or until his successor as chairman shall be duly elected."

From the above outline it can be seen that Mr. Morton was elected by the Commission to be chairman on July 2, 1952, until the Commission's first meeting in July of 1953. Subsequent to July, 1953, to the present date no action has been taken by the Commission to elect a new chairman, nor in fact has any action been taken by the Commission with respect to the chairmanship of the Commission since July of 1953.

Chapter 398 of the Public Laws of 1953 revises Section 3 of Chapter 20 of the Revised Statutes and substantially changes the duties of the chairman of the Highway Commission, providing also that such chairman shall be appointed by the Governor.

Section 2 of Chapter 398 reads as follows:

"Effective date. This act shall become effective either at the expiration of the term of office of whomever may be chairman of the highway commission on the date of approval of this act or upon a vacancy occurring by resignation or otherwise in the office of chairman of the highway commission, whichever is sooner."

Section 3 of Chapter 20 of the Revised Statutes provides in part that

“ . . . the commission shall choose a chairman from its members every year, and in case of failure to make such choice, the governor shall appoint a chairman.”

The following questions have been asked of this office relative to the above statutes with respect to the chairmanship of the Highway Commission:

1. Is there presently a vacancy in the office of chairman of the Highway Commission such as will give effect to Chapter 398 of the Public Laws of 1953?

The answer is, “Yes.”

As will be noted in Section 7 of Chapter 20, the law imposes upon the Commission the duty of choosing a chairman from its members every year. Upon failure in that duty, the Governor shall then appoint a chairman.

Mr. Morton’s term of office as chairman of the Commission expired in July of 1953. The Commission having failed to make the necessary appointment, there is now a vacancy in that office.

2. If the Governor fails to take steps to appoint a chairman of the Commission, can the Commission now select a new chairman?

The answer is, “No.”

There being a vacancy in the office of chairman, then by the provisions of Section 2 of Chapter 398 the entire Act as seen in Chapter 398 of the Public Laws of 1953 goes into effect, and Section 1 of that chapter provides that the chairman shall be appointed by the Governor.

ALEXANDER A. LaFLEUR

Attorney General

December 3, 1953

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

Re: Fairness in Trapping Licensing

We have your memo of November 30, 1953, in which you state that you have a game management area in Chesterville where you have a dam and a marsh for migratory waterfowl, muskrats, and other fur-bearing animals. You further state that in order to limit the number of muskrats taken out of the area you have given a direct concession to one person to trap in that area. You ask the following question:

“Under the law can we control the trapping in the Management Areas so that we may designate the trapper whom we want to take out a limited number of the fur-bearing animals?”

It is a basic principle of our laws that they be exercised uniformly and that one citizen of the State is not to be discriminated against to the favor of another. For this reason we do not feel that concessions should be given by the State to any person to the exclusion of others, to trap fur-bearing animals.