

MAINE STATE LEGISLATURE

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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.

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Deputy Attorney General

jgf/c