

MAINE STATE LEGISLATURE

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December 23, 1954

Yes

To H. H. Harris, Controller
Re: Constitutional Law Officers, Age Limit

We have your memo in which you ask the following question:

"Is it legal and permissible for the State Controller to allow salary payments to Constitutional Law Officers, elected by the Legislature, who have passed their seventieth birthday without an extension authorized by Governor and Council action?"

Your question arises as a result of the enactment by the Legislature of the following law: (Sec. 6-A of Chapter 60, R. S. 1944, I-B.)

"Any member in service who attains age 70 shall be retired forthwith on a service retirement allowance or on the first day of the next calendar month; except that any member who is an elected official of the state or an official appointed for a term of years may remain in service until the end of the term of his office for which he was elected or appointed. Notwithstanding the foregoing, on the request of the governor with the approval of the council, the board of trustees may permit the continuation for periods of 1 year, as the result of each such request, of the service of any employee who has attained the age of 70 and who desires to remain in service."

Subsequent to the enactment of this statute, the Legislature, in joint convention, elected an officer who had attained age 70 to serve for a period of two years in a constitutional office. Such action was, of course, inconsistent with the wording of the law above quoted, and the question propounded raises the legal effect of such election by the Legislature.

In effect, it is asked if the Legislature, after enacting a law, can subsequently take action which is contrary to that law. In other words, can the Legislature amend its laws?

In answering this question we have considered that action taken by the Legislature in accordance with and under the authority contained in the Constitution of Maine, has the same effect as an "Act", so-called, of the Legislature, that is, it has the effect of law, and we are of the opinion that the Legislature, either expressly or by implication, can amend its laws.

Two principles of law involved in considering inconsistent acts of the Legislature compel us to the conclusion that election of such an "over age" official by the Legislature is a legal election. Firstly, special acts of the Legislature generally take precedence over general laws which are inconsistent with the special Act. In the second instance acts subsequent in time prevail over prior inconsistent acts.

Examining the facts, we find that the Legislature, of its own volition, and acting as authorized by the Constitution, elected a constitutional officer who had attained the age of 70 years, and this in the face of a statute providing that members of the retirement system, upon attaining age 70 shall retire forthwith (with two exceptions not here pertinent).

Applying the aforementioned principles of law, we believe that such election had the effect of amending Section 6-A, I--B, so that that section does not include constitutional officers elected by the Legislature.

To hold that the Legislature acted without full knowledge of the facts, or unwisely, would be for this office to substitute its judgment for that of the Legislature. This we will not do.

The answer, then, to your question, "Is it legal and permissible (to pay such officers)?" is in the affirmative.

Further and more compelling reason for holding that the law quoted above does not apply to constitutional officers can be seen in the Opinion of the Justices, 137 Maine, pages 352, 353. Therein the Court stated that, with respect to the office of Treasurer of State, whose election, tenure of office, etc., are substantially the same as those of the office in question, the constitutional provision is a complete inhibition against the enactment of legislation filling the office by any method of selection not prescribed by the Constitution.

James Glynn Frost
Deputy Attorney General

jgf/c
(Originally signed by A. A. LaF.)