

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

pointed by the Governor, by and with the advice and consent of the Council, for a term of 4 years; and he shall be sworn, and give bond to the county as required by law. In case of the absence of said recorder from court, or should a vacancy occur in the office of recorder, the judge may appoint a recorder, pro tempore, who shall be sworn by said judge, and act during such absence, or until such vacancy be filled. Said recorder shall receive an annual salary of \$2,250 and an annual allowance of \$1,400 for clerk hire, to be paid to him in monthly payments from the treasury of the county of Androscoggin."

As you can see from the second sentence of section 4, when a vacancy occurs in the office of recorder, the judge may appoint a recorder pro tempore who shall act during such absence or until such vacancy be filled.

In the Public Laws of 1959, Chapter 42, we find—"From and after the effective date of this act the title 'recorder' of any municipal court shall be 'associate judge' of the said municipal court, provided said recorder is an attorney at law."

By virtue of the Auburn Municipal Court charter and the above-quoted provision of the statutes, it appears that the judge of the Auburn Municipal Court has the authority to appoint an associate judge after a vacancy had occurred in that office by the death of the associate judge and the further fact that the vacancy had not been filled by gubernatorial appointment.

GEORGE C. WEST

Deputy Attorney General

October 11, 1961

To: Governor John H. Reed

Re: Councillor District, Re Apportionment and Continuation of

Reference is made to your memo of October 10 in which you refer to Chapter 109, Resolves 1951. "Resolve, Dividing the State into Executive Councillor Districts." You further state: "It would appear, after reviewing the content of the Resolve, that the districts therein created would cease to exist after December 31, 1962." You have asked the following questions:

1. Is the observation made in the first paragraph substantially correct?

Answer: Yes. This Resolve provides in part—"That for the years 1953 to and including the year 1962, the state is hereby divided into 7 councillor districts, . . ." Very definitely this Resolve extends only to the end of the year 1962 so that the effect of this Resolve expires December 31, 1962.

2. If the answer to Question Number 1 is in the affirmative, would you kindly elaborate, for my information, on the representation status of the Executive Councillors providing that legislative action is not taken to continue the Executive Councillor Districts or recreate these or other Districts?

Answer: An examination of the Public Laws or Revised Statutes discloses that there are no provisions for the distribution of Executive Councillors throughout the state.

The Constitution of Maine, Article V, Part Second, Section 2, provides that the Councillors shall be chosen biennially on the first Wednesday of January by

joint ballot of the Senators and Representatives in convention, and further provides that vacancies which shall afterwards happen shall be filled by the Governor with the advice and consent of the Council from the same District in which the vacancy occurred and the oath of office shall be administered by the Governor, said Councillor to hold office until the next convening of the legislature. The Constitution then provides — “. . . but not more than one counsellor shall be elected or appointed from any district prescribed for the election of senators; . . . ”

The term of office of a Councillor expires at midnight following the first Wednesday of January. *Opinion of the Justices*, 70 Me. 570. If no legislative action is taken to continue the Executive Councillor Districts or recreate other Districts, the legislature in joint convention on the first Wednesday of January may choose Councillors provided that no Senatorial District shall have more than one Councillor. In other words, 7 of the 16 Senatorial Districts would be entitled to a Councillor.

3. If it is the desire of the Legislature to provide for the continuation of the provisions of Chapter 109, Resolves 1951, would you kindly advise me as to how, you believe, this could best be accomplished?

Answer: This office believes that the 7 Councillor Districts should be set forth in the Revised Statutes, Chapter 11, which relates to the Executive Department and the Council. If this is done, it will not be necessary for someone to remember every 10 years to present a Resolve to the legislature. Normally, there would be no one person who would have this procedure of apportionment by Resolve on his calendar 10 years hence.

It would probably be advisable to have a Resolve setting forth the years in which each county within a Councillor District is to be entitled to a Councillor. It would be most difficult to word this matter in the Revised Statutes, and would be a method of assuring the small counties in a District of proportional representation. Even if a legislature forgot to make this apportionment after a ten-year period, at least the Councillor District would have its proper representation.

In any event, it would appear advisable and probably necessary that some action relative to Councillor Districts be taken at the coming special session. It would be legally correct to enact a Resolve in the form of Chapter 109, Resolves of 1951, if the legislature does not wish to add a section to Chapter 11 setting forth the Councillor Districts.

GEORGE C. WEST

Deputy Attorney General

October 18, 1961

To: Asa Gordon, Coordinator of Maine School District Commission

Re: Application for the Formation of a School Administrative District by Superintending School Committee

This is in answer to your request for an opinion relative to the application for the formation of a school administrative district under Section 111-F of Chapter 41 of the Revised Statutes, when a community school district proposes to