

# MAINE STATE LEGISLATURE

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October 10, 1963

Walter F. Blaser, Commissioner

Mental Health and Corrections

Cleveland D. Perry, Asst. Atty. Gen'l.

Mental Health and Corrections

Authority of Commissioner of Mental Health and Corrections to Appoint Substitute  
Member of Probation and Parole Board.

**RASB:**

The procedure of the office of Commissioner of Mental Health and Corrections, when it becomes necessary for said Commissioner to appoint a person to serve in his place as an official member of the Probation and Parole Board, under the provisions of R.S. 1954, c. 17-A, §2 which reads in part as follows:

"The Commissioner of Mental Health and Corrections shall be an official member of the board, except that he may appoint any suitable person from his department to serve during his absence, in his absence, as a member of the board, but in no case longer than his term of office as Commissioner."

**SHKZHU:**

By the Commissioner of Mental Health and Corrections under the above cited statute appoint as an official member of the Probation and Parole Board to serve in place of the Commissioner, either the Director of Division of Probation and Parole or any other employee of such division.

**SHKZHU:**

Re.

**SHKZHU:**

Although, the Probation and Parole Board is created within the Department of Mental Health and Corrections, thus, standing within such department the Division of Probation and Parole, this alone is not determinative of the authority of the Commissioner of Mental Health and Corrections to appoint as a member of the Probation and Parole Board, personnel from such division. The Director of the Division of Probation and Parole is the Executive Officer and Secretary of the Probation and Parole Board and thus, his function with respect to activities of the board is prescribed by statute, in itself sufficient to preclude membership on the Board. Further, the probation and parole board prescribes the director's duties, supervises his activities, and may delegate certain authority to him, such as the authority to sign documents for the Board. The Commissioner of Mental Health and Corrections appoints such director, subject however, to the approval of the Board. It is clear from the statutes that the Legislature intended that the

Walter F. Hines

October 10, 1963

Director of the Division of Probation and Parole be subordinate to the Probation and Parole Board, subject to its direction and supervision; it follows that the Director of the Division of Probation and Parole can not act as a member of the Board and be simultaneously, principal and agent, but must remain in all aspects of his work, subordinate to the Board.

The Director of the Division of Probation and Parole is responsible for the appointment of all other personnel of the Division of Probation and Parole, subject to the approval of the Board, and where not specified by statute said Director is responsible for the prescription of the duties and functions of such personnel, and supervises and directs all work of personnel appointed by him. It, therefore, follows that a member of the Director's staff can not by statute be subordinate to the Director of the Division of Probation and Parole, and at the same time serve as the ex-officio member of the Probation and Parole Board and, thus, prescribe the duties of, supervise the activities of, and delegate authority to, his superior, the Director of the Division of Probation and Parole.

In examining the statutes relating to the Probation and Parole Board, and to the Division of Probation and Parole are clear in that they establish the duties and functions of the persons connected therewith, and establish levels of authority, the result of which is that a person subordinate by statute to the Probation and Parole Board can not at the same time serve on such Board.

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Gonzalez F. Perry  
Assistant Attorney General

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