

MAINE STATE LEGISLATURE

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October 30, 1963

Honorable Walter A. Birt
33 Pine Street
East Millinocket, Maine

Re: Election of Superintending School Committee.

Dear Mr. Birt:

Your letter of October 18, 1963 is hereby acknowledged.

FACTS:

At the 1962 annual town meeting of East Millinocket, the town elected one member to the superintending school committee to fill the vacancy arising due to the expiration of that particular post. Shortly after the annual town meeting all three of the superintending school committee members resigned necessitating the special election of three new members of the superintending school committee. These newly elected members were to serve terms which would expire at the next annual town meeting in 1963.

Pursuant to our opinion dated February 14, 1963, a three-member board was elected at the annual town meeting held on March 4 and 5, 1963. These elected members of the superintending school committee drew lots for three, two, and one year terms and so notified the town clerk pursuant to R. S., c. 41, § 46, as amended. On May 20, 1963, the "two-year member" resigned. His vacancy was filled by appointment by the other two members. On October 1, 1963, the "three-year member" moved from town, necessitating his resignation. The remaining two members of the school committee decided not to fill the vacancy by appointment. The selectmen, feeling that

the vacancy should be filled, have informed the townspeople that nomination papers should be circulated concerning the election of a member at the planned special town meeting.

QUESTION:

You ask the following questions: How will the School Board be elected at the next annual town meeting? Will the unexpired terms be filled and the one-year member be allowed to run for a three-year term, or will all candidates run for the School Board, and, after election, draw lots as would ordinarily be done for a completely new Board?

ANSWER:

The superintending school committee members elected at the 1964 annual town meeting should draw lots as to the length of their individual terms pursuant to R. S., c. 41, § 46, as amended.

REASON:

Applicable provisions of law are as follows:

"Sec. 45. Superintending school committee.
Every town not included in a school administrative district shall choose by ballot at its annual meeting a superintending school committee of 3 to hold office as provided in section 46 and shall fill vacancies arising therein at each subsequent annual meeting.

"Sec. 46. Terms; vacancies; restrictions.
School committees first chosen shall designate by lot a member or members to hold office 1, 2, and 3 years respectively, in manner as follows: one for 1 year, one for 2 years, and one for 3 years; and they shall certify such designation to the town clerk to be by him recorded; and thereafterwards 1 member shall be chosen by ballot at the

annual meeting of the town, to hold office for 3 years. Said Committee may fill vacancies occurring between annual meetings, and the term of office of any member of the committee so chosen shall expire at the next annual meeting.

. . . In case any member of the superintending school committee shall remove from the town or be absent for more than 90 days, a vacancy shall be declared to exist and the remaining members shall within 30 days thereafter choose another member as hereinbefore provided. Whenever the remaining members fail to appoint a person to fill a vacancy, the same shall be filled by election at a town meeting called for the purpose." R. S., c. 41, as amended.

Sections 45 and 46 of c. 41, R. S., do not apply to cities which have charters providing for methods of election and terms of office of its school committee or board; nor to towns, cities and incorporated districts authorized by private and special laws to choose school committees other than those provided for in sections 45 and 46. R. S., c. 41, § 47. Section 48 of c. 41 provides for a forfeiture against a town for failing to elect a superintending school committee.

At the next annual town meeting (1964) the town should choose three members of the superintending school committee and such members, after election, should draw lots to determine the length of their terms. The vacancy created by the resignation of the "two-year member" was filled by the then remaining members. The subsequent vacancy created by the resignation of the "three-year member" is to be filled by an election at a special town meeting scheduled for the near future. Both these terms of office are due to expire at the 1964 annual town meeting. R. S., c. 41, § 46. We note that all three superintending school committee positions will be up for election at the 1964 annual town meeting. The above-quoted provisions of law do not authorize the election of superintending school committee members for the purpose of completing the unexpired terms. And this is necessarily so for the reason

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that in those cases of resignation of superintending school committee members, the Legislature has decreed that no unexpired term shall exist beyond the next annual town meeting.

In effect, we incorporate herein the principle expressed by our Legislature in R. S., c. 41, § 45, providing for the enlargement of superintending school committee from 3 members to 5 members. Note that at the time of an enlargement, 3 vacancies are filled, i.e., the two "new" members and the one-year member whose term then expired. Following the election, all three members are to draw lots to determine the length of their terms; and this is so even though the regularly expiring position would ordinarily have been renewed for three more years. Thus, in the present case, the regularly expiring position (which ordinarily would have been renewed for a three year period) will be renewed for a term to be determined by the drawing of lots.

Very truly yours,

John W. Benoit
Assistant Attorney General

JWB/slf