

MAINE STATE LEGISLATURE

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yes ✓

February 10, 1967

Joseph T. Edgar, Secretary of State

State

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Attorney General

Advisory and Review Board

FACTS:

The 102nd Legislature at its Special Session enacted P.L. 1965 c. 480. By this enactment the Secretary of State was to appoint an Advisory and Review Board of 12 members representative of 12 different organizations to assist him in certain phases of the Motor Vehicle Division. The members serve without compensation.

It appears that the former Secretary of State did appoint 12 members. The records of the Secretary of State's office do not reveal that any of the members ever recorded their qualifications. Also, the records of the office do not reveal the terms to which all members were appointed.

QUESTION:

Is it a legal requirement for membership on the Advisory and Review Board that a member take and subscribe an oath of office?

ANSWER:

Yes.

OPINION:

The Constitution of Maine, Article IX, section 1, provides in pertinent part:

" . . . every person, . . . appointed, . . . to any judicial, executive, military or other office under this State, shall, before he enters on the discharge of the duties of his place or office, take and subscribe the following oath or affirmation: " (Here follows the form of the oath.)

In Opinion of the Justices, 3 Maine, at pages 482 and 483, the Court said:

"We apprehend that the term 'office' implies a delegation of a portion of the sovereign power to, and possession of

it by the person filling the office; - and the exercise of such power within legal limits, constitutes the correct discharge of the duties of such office. The power thus delegated and possessed, may be a portion belonging sometimes to one of the three great departments, and sometimes to another; still it is a legal power, which may be rightfully exercised, and in its effects it will bind the rights of others, and be subject to revision and correction only according to the standing laws of the State." (Page 482.)

"An office being a grant and possession of a portion of the sovereign power, it is highly proper that it should be guarded from abuse as far as possible; and to this end, that every person holding an office should be under the obligation of the oath in that section specified. It appears then, that every 'office,' in the constitutional meaning of the term, implies an authority to exercise some portion of the sovereign power, either in making, executing or administering the laws." (Page 483.)

Examined by the foregoing test the Board created by the above-cited law is an "office" within the meaning of Article IX, section 1. The Board is created by statute to assist the Secretary of State by reviewing and advising him in the performance of his statutory duties in certain areas relating to motor vehicle laws.

The failure of the Board members to take and subscribe the above-cited oath means that they have not, as yet, qualified for membership on the Board. This does not mean that any action taken by the Board is void. They could act as de facto officers.

In spite of the foregoing, the persons appointed could now take and subscribe to the oath and constitute themselves a proper Board. 5 M.R.S.A. § 6, provides that "public officers appointed by the Governor and Council shall, within 30 days after being commissioned, qualify to perform the duties of their office." There is no other general time limit set forth in either the Constitution or the statutes. The members appointed to the Board are not appointed by the Governor and Council so there is no time limit within which they must qualify.

Joseph T. Edgar

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The Secretary of State should send oaths to those whose terms he knows advising them to take and subscribe to the oath and file their qualifications. An attempt should be made to ascertain the terms of those two who have not answered his prior inquiry. Those whose terms are unknown should be advised that they are not properly members of the Board. If no record of their terms can be located, the Secretary of State should appoint new members advising them the necessity of qualifying.

George C. West
Deputy Attorney General

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