

MAINE STATE LEGISLATURE

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June 23, 1967

Charles F. Rogan, Director, State
Fire Prevention
Jerome S. Matus, Assistant

Insurance
Attorney General

Delegation of Authority of Acting Insurance Commissioner.

FACTS:

By memo dated June 8, 1967, you indicate that the Acting Insurance Commissioner, The Honorable Harold E. Trahey, has asked you to obtain from this Department a legal opinion to the following question:

QUESTION:

Does he, as Acting Insurance Commissioner, have the power to delegate his authority to the different department's division heads under his command, including the right to make decisions, sign licenses, grant waivers from the regulations, etc.?

ANSWER:

See OPINION.

OPINION:

As Acting Insurance Commissioner, the Honorable Harold E. Trahey may not delegate his authority to various division heads of the Insurance Department to make decisions of the Acting Insurance Commissioner, sign licenses and grant waivers from regulations unless there is authority in the Maine Statutes permitting this delegation.

The provisions of 24 M.R.S.A. § 51 relate to the appointment, term and duties of the Insurance Commissioner and Deputy Insurance Commissioners and reads as follows:

"The Insurance Department, as heretofore established, includes the Division of State Fire Prevention.

"The head of the department is the Insurance Commissioner.

"The Insurance Commissioner, as heretofore appointed and hereinafter in this Title called 'commissioner', shall be appointed by the Governor with the advice and consent of the Council and shall hold his office for 4 years and until his successor has been appointed and qualified, but shall not at the same time be Bank Commissioner. His office shall be at the State Capitol. He may administer oaths in the performance of his official duties in any part of the State and at any time. He shall keep a correct account of all his doings and of all fees and moneys received by him by virtue of his office, and pay over the same to the Treasurer of State forthwith. He shall receive an annual salary of \$11,500. He may appoint, subject to the Personnel Law, not to exceed 2 deputy commissioners, one of whom, by virtue of such appointment, shall be and perform all the duties of the first deputy insurance commissioner. In the event of a vacancy in the office of the Insurance Commissioner or during the absence or disability of that office, the first deputy insurance commissioner so appointed shall become during such vacancy, absence or disability of that officer the acting insurance commissioner."

Until an Insurance Commissioner is appointed by the Governor with the advice and consent of the Council, the first Deputy Insurance Commissioner, in this instance the Honorable Harold E. Trahey, is the acting Insurance Commissioner and has all the powers and duties of his predecessor in office, the late Insurance Commissioner, the Honorable George F. Mahoney.

It is our understanding that the late Insurance Commissioner did not appoint a second Deputy Insurance Commissioner, which appointment would have been optional under 24 M.R.S.A. § 51. This being the case, it is our opinion that the Acting Insurance Commissioner having all the powers and duties of the Insurance Commissioner may appoint an Acting Deputy;

the Acting Deputy may act in his stead in the event of a vacancy in the office of Acting Insurance Commissioner or during the absence or disability of the Acting Insurance Commissioner. To rule otherwise would cause a situation whereby no person would be responsible for the affairs of the Insurance Department in the event of the death, absence or disability of the Acting Insurance Commissioner. Such a situation would not make sense and could not be the intent of 24 M.R.S.A. § 51.

The Acting Deputy Insurance Commissioner for the Acting Insurance Commissioner may also be the head of a division of the Insurance Department and in the event of the death, absence or disability of the Acting Insurance Commissioner, the powers and duties of the Acting Insurance Commissioner are entrusted to the Acting Deputy Insurance Commissioner.

Jerome S. Matus
Assistant Attorney General

JSM/eh