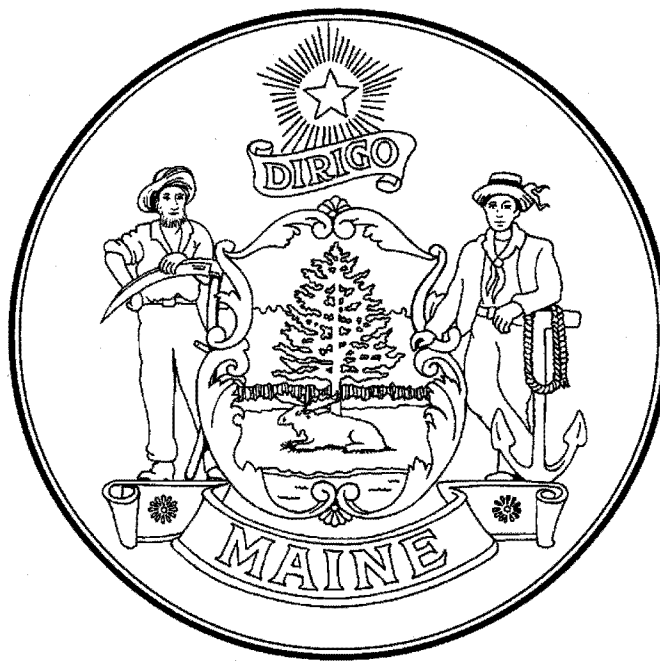


MAINE STATE LEGISLATURE

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MEMORANDUM

Re: Fish and Game Commissioner as Candidate for Political Office.

Article I, § 23 of the Maine Constitution is as follows:

"No title of nobility or hereditary distinction, privilege, honor or emolument, shall ever be granted or confirmed, nor shall any office be created, the appointment to which shall be for a longer time than during good behavior."

I interpret the language, "during good behavior", as meaning that even though a person be appointed to office for a definite term, such as for a period of three years, that person is entitled to serve only while in the exercise of "good behavior". Any specified conduct on the part of the person so in office considered in law to be other than good behavior would, in my opinion, be cause for removal.

What is meant by the expressions "during good behavior" and "good behavior"? The phrase "during good behavior" means "while conducting one's self conformably to law". United State v. Hrasky, 240 Ill. 560, 88 N.E. 1031, 1034. "Good behavior" is conduct authorized by law. In re Spencer, 22 Fed. Cas. 921, 922. The term "breach of good behavior", as used in a constitutional provision that clerks of courts shall be removed for a breach of good behavior, means

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unreasonable neglect; as, if the clerk should wantonly refuse to obey an order of court. State v. Poll, 2 West. Law Journ. 121, 137. In Commonwealth v. Williams, 79 Ky. 42, 47, 42 Am. Rep. 204 (and other Kentucky cases cited), it was held that in those proceedings under a provision of the Constitution providing that clerks should be removable from office for breach of good behavior, the inquiry was confined to misconduct in office, and that conduct, however immoral, which did not relate to the official action of the clerk, constituted no ground for his removal.

The Commissioner of Inland Fisheries and Game obtains his office by appointment "by the Governor with the advice and consent of the Council." 12 M.R.S.A. § 1951. The power of removal, where the appointment is by the Governor with the advice and consent of the Council, is not conferred by the Constitution on the Governor alone. Opinion of the Justices (1881), 72 Me. 542. In fact, the removal proceedings specified in Article IX, § 5 of the Maine Constitution relating to officers requires the stating of "the causes of removal"; which causes must be of a substantial nature. Moulton v. Scully, 111 Me. 428, 89 A. 944. The cause must be a legal cause; neither trivial nor capricious. Ibid. As noted earlier, there must be a showing of

breach of good behavior, as defined in law, to support removal. The statutes relating to the Commissioner recite no bar to his candidacy for a seat in Congress. On the contrary, the tenor of Article IX, §2, Maine Constitution, negates the breach of good behavior arising ipso facto from a candidacy for a seat in Congress by a public officer. Surely, the candidacy is a proper condition precedent to the election and acceptance specified in Section 2; which election and acceptance are not deemed improper behavior:

"Section 2. No person holding the office of Justice of the Supreme Judicial Court, or of any inferior court, Attorney General, county attorney, Treasurer of the State, Adjutant General, judge of probate, register of probate, register of deeds, sheriffs or their deputies, clerks of the judicial courts, shall be a member of the Legislature; and any person holding either of the foregoing offices, elected to, and accepting a seat in the Congress of the United States, shall thereby vacate said office; and no person shall be capable of holding or exercising at the same time within this State, more than one of the offices before mentioned." Article IX, § 2, Maine Constitution. (Emphasis supplied.)

In conclusion, the reference candidacy of the Commissioner is not, of itself, a breach of good behavior. No breach of good behavior exists in law except from misfeasance (not doing a lawful thing in a proper manner, or omitting to do

it as it should be done, i.e., a misdeed or trespass),
malfeasance (doing of an act wholly wrong and unlawful),
nonfeasance (substantial failure to perform a duty) and
related causes.

John W. Benoit, Jr.

JOHN W. BENOIT, JR.

Deputy Attorney General, 1970-1975