

MAINE STATE LEGISLATURE

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1/12/1971
Reginald Martin

James S. Erwin

~~XXXXXXXXXXXX~~
ATTORNEY GENERAL



GEORGE C. WEST
DEPUTY ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA

January 12, 1971

Honorable Kenneth P. MacLeod
President of the Senate
State House
Augusta, Maine

Re: Resignation of Senator James Martin

Dear Ken:

You have asked that this office advise you with respect to the legal effect of Senator Martin's statement of resignation given in the Senate, on the record, on January 6, 1971. Senator Martin's statement, so far as pertinent, is as follows:

" . . . at this time I am announcing my resignation as a member of the Senate of the 105th Legislature. . . ."

The specific question which has been raised is whether it is necessary for a member of the Senate to tender his resignation in writing before it can be accepted. A further question which has arisen is whether resignation may be withdrawn before it is acted upon by the Senate.

The general rule is that a resignation of a public officer need not be in any particular form, unless some form is prescribed by the statute. Ordinarily, it may be either in writing or oral. See 43 Am. Jur., Public Officers, § 165. A State Legislator is such a public officer. See 43 Am. Jur., Public Officers, § 26.

To be effective a resignation from public office must be made with the intention of relinquishing the office accompanied by the act of relinquishment and usually must be tendered to the authority having power to appoint a successor, or if an elective office, it should be tendered to the person who has power to call an election to fill the vacancy. See Sadler v. Jester (D.C. Texas, 46 Fed. Supp. 737, 740). The courts of Maine have followed the principle that resignation must be made to the appointing power or the power authorized to call an election. See Dostie v. Lewiston, 114 Me. 62 (65).

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It has also been held that a resignation tendered to an improper person or body is a nullity. See 43 Am. Jur., Public Officers, § 168.

The prevailing view is that to be effective, the resignation must be accepted by competent authority, either in terms or by something tantamount to an acceptance. Without acceptance the resignation is a nullity and the officer remains ~~in office~~. A minority view states that no acceptance is necessary. See 43 Am. Jur., § 167.

With respect to withdrawal of resignation, there is authority for the view that a resignation whether unconditional in terms or prospective may be withdrawn before its acceptance. In essence, a resignation to be effective involves a mutuality of assent by the person determining to resign and by the body or person who is to accept the resignation. Once there has been an acceptance of the resignation, the rule is that it may not be withdrawn. See 43 Am. Jur., Public Officers, § 170.

In sum then, it is fair to say that a member of the State Legislature has a legal right to resign, provided he adopts the proper procedure looking to that end and provided his resignation is tendered to the officer or body having ~~power to order~~ a new election and provided that the attempted resignation is accepted by the proper authority.

In the particular case at hand, the attempted resignation was made on the record in the Senate of the Maine Legislature. The Governor of the State of Maine is charged with the duty of proclaiming a necessity for and the fixing of the time of an election to replace a State Senator. The Maine Constitution, Article IV, Part Two, Section 4-A provides in pertinent part:

" All vacancies in the Senate arising from resignation . . . shall be filled by an immediate election in the unrepresented district. The Governor shall issue a proclamation therefor and therein fix a time of such election."

(See also Title 21 M.R.S.A. § 1501, et seq.)

Therefore, it is our view that Senator Martin's attempted resignation was improperly laid before the Senate and should have instead been tendered to the Governor of the State of Maine.

Therefore, a State Senator need not tender his resignation in writing to make it effective if he intends to relinquish the office; tenders his resignation to the Governor and the resignation is accepted by the Governor.

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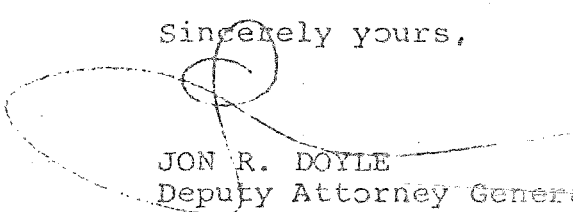
If in this case Senator Martin desires to continue in office, it would seem proper procedure for the Senate to take no further action, except in the event that should the Senate have before it an order accepting the resignation of the Senator, that order should be withdrawn or otherwise nullified.

If Senator Martin wishes to resign, he should present his resignation to the Governor of the State, who may then act in accordance with the provisions of the Constitution.

In view of the conclusion which we reach herein, it is not necessary for us to determine whether the language used by Senator Martin does evidence an intention to relinquish the office accompanied by an act of relinquishment and which is a necessary part of resignation.

Thank you for your attention.

Sincerely yours,


JON R. DOYLE
Deputy Attorney General

JRD:mfe