

MAINE STATE LEGISLATURE

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ACW STATE OF MAINE

Inter-Departmental Memorandum Date July 18, 1972

To Edmund C. Darey, Executive Councillor Dept. Executive

From James S. Erwin, Attorney General Dept. Attorney General

Subject Reappointment of Commissioner of Finance and Administration

In accordance with your telephone request today, I herewith submit to you my opinion on the question of whether or not Section 143-C, Chapter 622, P.L. 1971, "An Act to Correct Errors and Inconsistencies in the Public Laws", requires a reappointment of the Commissioner of Finance and Administration. That section reads:

"It is the intent of the Legislature that the persons serving as interim commissioners of the departments as created by chapters 488 to 499, all of the public laws of 1971, be terminated."

Section 1 of Chapter 615, P.L. 1971, "An Act Implementing the Reorganization of the Department of Finance and Administration, states, in part:

"The Department of Finance and Administration as heretofore established. . . ."

"The department shall be under the supervision and control of a Commissioner of Finance and Administration, as heretofore appointed and hereinafter in this chapter called the 'Commissioner'." (Emphasis supplied)

Section 1, Chapter 497, P.L. 1971, "An Act to Reorganize the Department of Finance and Administration" reads:

"The Department of Finance and Administration as heretofore established shall serve as the. . ."
(Emphasis supplied)

Such express acknowledgment by the Legislature, in both the planning and reorganization enactments, of the prior establishment of this Department, clearly disclaims any legislative purpose to create a new department. There is nothing in either of these Acts which suggests any contrary intent. Furthermore, there is nothing in either of these Acts that indicate any requirement for reappointment of the Commissioner of this "heretofore established" department. It is true that the duration of the term of the Commissioner is altered by each Act, i.e., from 7 years, heretofore, to "at the pleasure of the Governor and Council," under Chapter 497, P.L. 1971, and now to "coterminous" with the Governor, under Chapter 615, P.L. 1971. But, such modification of his term clearly does not require a present reappointment.

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Therefore, since it is indisputably clear that the Department of Finance and Administration was not newly "created," the statement of intent in Section 143-C, Chapter 622, P.L. 1971, that the interim commissioners of such newly created departments shall terminate, is inoperative as to the Commissioner of Finance and Administration. That commissioner continues to carry on under his appointment prior to enactment of Chapter 497, P.L. 1971, subject to the limitation that his term has now been modified to be "coterminous" with that of the Governor.



James S. Erwin
Attorney General

JSE:mfe