

MAINE STATE LEGISLATURE

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The Secretary of State's Corporation and UCC Division has asked whether it is necessary to amend the Constitution of Maine to enable the Secretary of State to issue commission renewals for Notaries Public and Justices of the Peace or whether legislative approval of this procedure would be sufficient. Presently these officials are appointed by the Executive pursuant to Art. V, Part 1, § 8, which reads in part:

"He shall nominate, and, with the advice and consent of the Council, appoint all judicial officers (except judges of probate), coroners, and notaries public. . . ."

These officials then usually hold office for a seven-year term pursuant to Art. VI, § 4, entitled "Tenure of judicial officers." This section reads:

"Section 4. All judicial officers shall hold their offices for the term of seven years from the time of their respective appointments (unless sooner removed by impeachment or by address of both branches of the Legislature to the executive, provided further that justices of the peace may be removed from office in such manner as the Legislature may provide) and no longer, unless reappointed thereto."

For present purposes we shall assume that a notary public is within the meaning of "justices of the peace" as used in § 4, so that this tenure rule applies to both officials in question as judicial officers. This assumption seems warranted in light of three things: (1) 4 M.R.S.A. § 953, which gives a notary the additional power and jurisdiction to "do all things that justices of the peace are or may be authorized to do," (2) a case construing this language broadly (Duncan v. Grant, 86 Me. 212), and (3) administrative practice under this section.

The basic rule of § 4 (above) on tenure is that judicial officers serve a "term of seven years. . . and no longer, unless reappointed thereto." The word "reappointed" undoubtedly refers to the same appointment procedure by which the officer originally took office; that is nomination and appointment by the Executive under Art. V, Part 1, § 8.

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Also, at least with respect to notaries public, the Maine Constitutional Commission in its Third Report (February 13, 1963) has suggested that the "authority concerning the appointment, control, and removal of Notaries Public should be a matter of legislation enacted by the Legislature"; not a matter of constitutional authority. But the suggested amendment to accomplish this was not adopted. This indicates that the Commission considered the Governor's appointing and reappointing authority for notaries public to be governed by the Constitution (Art. V, Part 1, § 8). The Commission's view is consistent with the interpretation set forth herein.

Thus the language of the Constitution, while authorizing the Legislature to enact a procedure to facilitate the removal of notaries public and justices of the peace, does not grant it authority to provide for simpler, quicker means for reappointment of these officers. The language must be changed or an exception made to it before the Secretary of State could constitutionally renew the commission of a notary public or justice of the peace. This would involve a constitutional amendment.

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