

MAINE STATE LEGISLATURE

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October 18, 1973

Madge E. Ames, Acting Director

Labor and Industry

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Board of Elevator Rules and Regulations

The Bureau of Labor and Industry (memo dated October 1, 1973) inquired as to who, if any one, is the person authorized to appoint the 6th member of the Board of Elevator Rules and Regulations, which member is to be an elevator mechanic. The question arises following a 1973 amendment to 26 M.R.S.A. § 431 which increased Board membership from 5 to 6. While the Legislature did not specify who was to appoint this 6th member, it is reasonable to conclude that the Director of the Bureau of Labor and Industry is the person so authorized for the following reasons.

The statute (§ 431) reads in part:

"The said board shall consist of 6 members, of whom 3 shall be appointed to membership by the director, subject to the approval of the Governor and Council. . . . Of the 3 appointed members of the board, 1 shall be a representative of owners or lessees of elevators within the state; 1 shall be a representative of manufacturers of elevators; 1 shall be a representative of insurance companies licensed to insure elevators in the State. The 4th member of the board shall be a member of the Division of Fire Prevention appointed by the Commissioner of Public Safety and the 5th member of the board shall be the Director of the Bureau of Labor and Industry, who shall be chairman of the board and the 6th member shall be a licensed elevator mechanic."

The Board membership scheme consists of two state officials, the 4th and 5th members, whose appointment or membership is specifically provided for in § 431, plus three members each one of whom is drawn from a generally described class of persons whose representation on the board is thought to be desirable. Since the 6th member is neither specifically named, nor his appointment specifically provided for in § 431 but rather is simply required to be a member of the general class of persons

who are "licensed elevator mechanics", then the 6th man would appear to be a member who, like the other 3 representatives of their respective classes, is to be appointed by the Director of the Bureau.

Furthermore, the Director is given the power to fill vacancies and appoint successors with respect to the positions held by the class or group representatives. It would be illogical to grant the Director those powers but give the appointing power to no person or to another person only for the elevator mechanic's position.

While generally an agency should hesitate to act without explicit legislative authority especially when it could have so easily been clearly given, here the logic of the board membership scheme seems to compel the result set forth, that the Director of the Bureau of Labor and Industry is the proper appointing authority for the 6th member.

However, we would recommend that the Bureau ask for an amendment for inclusion in the Errors and Inconsistencies bill to have the statute comply with this opinion.

EF/mf

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NOT A FORMAL OPINION