

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 22, 1974

To Allen G. Pease, Administrative Ass't. Dept. Executive

From Jon A. Lund, Attorney General Dept. Attorney General

Subject Termination of Incumbent Gubernatorial Authority

SYLLABUS:

The term of office of an incumbent governor terminates at midnight following the first Wednesday of January, provided that his successor is then duly elected and qualified.

FACTS:

You have requested an opinion of this office as to the precise date and time of day when the next gubernatorial administration assumes responsibility, in order to assure a proper transfer of the obligations of the Governor's Office.

QUESTION AND ANSWER:

When does the term of Governor Kenneth M. Curtis expire and the term of his successor begin? When his successor has qualified for the office of Governor.

REASONS:

With respect to the transfer of gubernatorial authority and responsibility, your interpretation is that the next Governor's assumption of responsibility will take place "at midnight following the first Wednesday of January." Until the very recent amendment (1971) of the language of Article V, Pt. 1, § 2 of our Constitution, your assumption was correct.

The Maine Supreme Judicial Court on at least two occasions has set forth the time period when one gubernatorial term expires and a succeeding term of office begins; midnight of the first Wednesday of January next succeeding the election.

"Under Article 23 of the amendments to the Constitution, providing that the Governor shall be elected biennially and hold office for two years from the first Wednesday in January next succeeding election, the Governor is elected for a political year and not a calendar year, so that the two year term as a Governor whose office began Thursday, January 1, 1913, expired at midnight January 6, 1915, that being the first Wednesday of January, 1915, when his successor's term began, . . . " Pattangall v. Gilman, 115 Me. 344, 98 A. 936 (1916).

"The terms of office of the Governor and his council, elected in January 1879, expired at mid-night following the first Wednesday of January, 1880; but the terms of the office of the Secretary of State, Treasurer, Attorney General, and Adjutant General, did not expire until their several successors were legally elected." Opinion of Justices, 70 Me. 570 (1880).

Such is no longer necessarily the case. There has been a change in the constitutional language which delineates the term of office of the Governor, and the citizens of Maine, via special election held in November of 1971, ratified said constitutional amendment. The applicable constitutional language previously read as follows:

"Section 2. The Governor shall be elected by the qualified electors, and shall hold his office for four years from the first Wednesday of January next following the election."
Article V, Pt. 1, § 2.

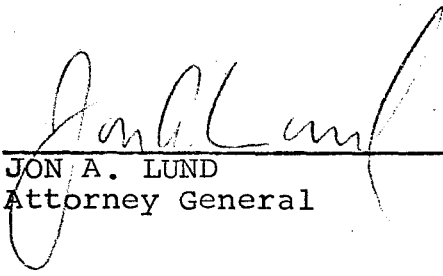
By Constitutional Amendment in 1971, noted above, the following language was added to said action.

"Section 2. The Governor shall be elected by the qualified electors, and shall hold his office for four years from the first Wednesday of January next following the election and until his successor has been duly elected and qualified."
(Emphasis supplied.) Article V, Pt. 1, § 2.

It has been stated that the Constitution must be construed as though it were made yesterday with full knowledge of all present demands and necessities. Baxter v. Sewerage District, 146 Me. 215 (1951). Giving words their ordinary and normal meaning, it appears indisputable that the above-cited amendatory constitutional language was adopted in order to insure that no vacancy in the office of Governor would ever occur during the transition of an incumbent and succeeding gubernatorial administration. The language of the title of the legislative document which proposed the 1971 amendment of Article V, Pt. 1, § 2 of the Constitution, leads to this conclusion.

"L.D. 40. Resolution, Proposing an Amendment to the Constitution, Providing that the Term of Office of the Governor Continues Until his Successor has Qualified." (Emphasis supplied.)

It is clear that the term of Governor Kenneth M. Curtis will not expire until his successor is administered the oath of office of Governor, for it is not until such time that said successor is "duly qualified" to assume his duties as chief executive of the State of Maine, within the meaning of our Constitution. The earliest time the newly qualified Governor may begin his term is immediately after midnight following the first Wednesday of January, 1975.



JON A. LUND
Attorney General

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