

# MAINE STATE LEGISLATURE

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December 10, 1974

Marie H. Mitchell, State Controller  
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Finance and Administration  
Bureau of Accounts and Control  
Attorney General

Term of Commissioner of Finance and Administration; Until Successor  
if Appointed and Qualified.

SYLLABUS, FACTS, QUESTION AND ANSWER:

The State Controller has requested our opinion whether under 5 M.R.S.A. § 287, the Commissioner of Finance and Administration holds office (a) for a term coterminous with the Governor, or (b) for a term coterminous with the Governor and until a successor is appointed and qualified. For the reasons which follow, it is our opinion that the statutory term of office extends until a successor is appointed and qualified.

REASONS:

5 M.R.S.A. § 287 provides, in pertinent part:

" . . . The Department of Finance and Administration shall consist of a Commissioner of Finance and Administration appointed by the Governor with the advice and consent of the Council to serve a term coterminous with the Governor, subject to removal for cause by the Governor and Council. . . . "

While the statute does not expressly recite that the Commissioner shall hold office until a successor is appointed, that result follows by virtue of a general statute on the subject.

5 M.R.S.A. § 3 has provided, since 1947 (P.L. 1947, c. 4) that:

"All civil officers, other than judicial officers, appointed by the Governor with the advice and consent of the Council and whose terms are fixed by law, shall hold office during the term for which they were appointed and until their successors in office have been appointed and qualified, unless sooner removed in accordance with law." (Emphasis supplied.)

In Maine Beauty Schools v. State Board of Hairdressers, 225 A.2d 424 (Me., 1967), the Supreme Judicial Court held that under the facts of that case this statute (5 M.R.S.A. § 3) had the effect of enlarging the term of members of the State Board of Hairdressers until their successors were appointed and qualified. The Court reached its conclusion even though the statutory term in question was "for 2 years" only, and, in sharp contrast, the predecessor statute explicitly

provided that the term was for "2 years and until his successor is appointed and qualified." (Emphasis supplied) 225 A.2d at 426. The legislative history of the provision relating to the Commissioner of Finance and Administration is analogous. See P.L. 1971, c. 497, § 1; P.L. 1971, c. 615, § 4.

We recognize that in several instances the Legislature has, notwithstanding the general statute (5 M.R.S.A. § 3) enacted specific legislation which expressly recites that the term of office shall be until a successor is appointed and qualified. See, e.g., 12 M.R.S.A. § 5011, Commissioner of Conservation; 23 M.R.S.A. § 4205, Commissioner of Transportation; 5 M.R.S.A. § 5004, Director of Energy Resources. Any interpretation which sought to give effect to the absence of specific hold-over language would frustrate the general applicability of 5 M.R.S.A. § 3. In the absence of the manifest clear intent of the Legislature that the general statutory provision does not apply, we must reject such an interpretation.

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