

# MAINE STATE LEGISLATURE

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Educational and Cultural Services

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Attorney General

Status of Bureau Heads under 20 M.R.S.A. § 1-B.5

SYLLABUS:

To the extent of conflict between the "Personnel Law," 5 M.R.S.A. § 551, et seq. and 20 M.R.S.A. § 1-B.5, the latter controls. Section 1-B.5 bureau directors, serving at the pleasure of the Commissioner may be removed without cause without otherwise affecting their classified status.

FACTS:

The Department of Educational and Cultural Services seeks our opinion to resolve an apparent conflict in 20 M.R.S.A. § 1-B.5 which requires certain bureau heads to be appointed by the Commissioner subject to the Personnel Law, but service by those appointed is to be at the pleasure of the Commissioner.

QUESTIONS AND ANSWERS:

1. Whether the last phrase of 20 M.R.S.A. § 1-B.5 "to serve at the pleasure of the Commissioner" has meaning? Yes.
2. If so, whether the Commissioner may remove bureau heads appointed pursuant to 20 M.R.S.A. § 1-B.5 without cause even though they were appointed subject to the Personnel Law? Yes.

REASONS:

The provisions of 20 M.R.S.A. § 1-B.5, giving the Commissioner of the Department of Educational and Cultural Services the power to establish "such other bureaus as [he] deems necessary to fulfill the duties of the department" and to appoint such bureau directors "subject to the personnel law, to serve at the pleasure of the commissioner" are in conflict with the pre-existing provisions of the "personnel law." 5 M.R.S.A. § 551, et seq.

The rules of statutory construction to be followed are:

1. Legislative intent;

2. The latest legislative expression prevails by an implied repeal of the earlier expression to the extent of the conflict. See State v. London, 156 Me. 123, 152 A.2d 150 (1960); Fuller v. State, Me., 282 A.2d 848 (1971); State v. Ferris, Me., 284 A.2d 288 (1941); and Attorney General's Opinion, July 25, 1968.

Here the Legislature, aware of the existence and scope of the "Personnel Law," gave the Commissioner the power to create such other bureaus as he deemed necessary to fulfill the duties and obligations of the department. Implicit in the Commissioner's power to establish such bureaus is the power to dismantle them. The Legislature therefore required appointment of bureau directors under the Personnel Law, but limited their service in such positions to the pleasure of the Commissioner.

Under the rules of construction mentioned above, the intent of the Legislature must be given effect. Because section 1-B.5 does not conflict with the entire "Personnel Law," 5 M.R.S.A. § 551, et seq, but only with the provisions of 5 M.R.S.A. § 671, et seq, especially § 671, the classified status of the individuals who serve as § 1-B.5 bureau directors is not otherwise affected.

The conflict between § 1-B.5 and the "Personnel Law" relates to the removal of bureau directors without cause. In this respect, under the fundamental rules of statutory construction § 1-B.5 controls. The § 1-B.5 bureau directors serve in their capacity as bureau directors at the pleasure of the Commissioner. He may remove them from such positions without cause.

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