

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date July 28, 1975

Joseph M. Hachadel, Asst. to Governor Executive

To James H. McGowan, Intern Dept. Executive

From S. Kirk Studstrup, Assistant Dept. Attorney General

Subject Appointment of Maine Maritime Academy representative to PECOM

Your memorandum of July 10, 1975 to Attorney General Brennan requested an opinion concerning procedures for selection of the Maine Maritime Academy member to the Post-Secondary Education Commission of Maine (PECOM). As you indicated, the question results from a lack of specific selection procedures for this member in the legislation which creates PECOM (P.L. 1975 c. 601; S.P. 344 - L.D. 1160), while procedures are specified for all other members.

Paragraph E. of the newly enacted subsection 20 M.R.S.A. 76, 1 states that one position on PECOM is to be held on a two-year alternating basis by a member of the Board of Trustees of the Maine Maritime Academy and a representative of the general public. The latter member is to be selected in the same manner as other representatives of the general public - by appointment by the Governor with the advice and consent of the Council (§76, 5). On the other hand, members from the Board of Trustees of the University of Maine, the State Board of Education and the Maine Delegation of the New England Board of Higher Education, are to be "selected in accordance with the procedures of the respective body." (§76, 1). Neither procedure is specifically provided for the member from the Maine Maritime Academy.

Research of the legislative history of P.L. 1975 c. 601 indicates that the new paragraph E. was added to the original L.D. 1160 by Committee Amendment "A" (Filing No. S-134). The amendment increased the size of the commission from 15 to 16 members and added paragraph E. However, it did not change other dependant parts of the bill. Presumably, this amendment was designed to add representation from the Maine Maritime Academy, but without diminishing relative public representation. However, the legislative history is insufficient to confirm this matter or indicate the Legislature's intent as to selection of the member in question.

The ambiguity concerning selection procedures is not resolved by looking to the language of the new paragraph E. It is provided that the sixth position will be shared". . . between a member of the Board of Trustees of the Maine Maritime Academy and an appointment representing the general public. . ." (emphasis supplied), which indicates that the former member would not be an appointee. On the other hand, the next sentence states, "The original 2-year appointment shall be filled by the trustee of the Maine Maritime Academy." (emphasis supplied) which implies the trustee would be an appointed member.

Numerous Maine judicial decisions have expressed the rule that in interpreting or construing statutes the primary goal is to give effect to the Legislative intent. Unreason, inconsistency, incon-

venience, and injustice are to be avoided (Brackett v. Chamberlain, 98 A. 933 (Me. 1916)), and the individual parts of the statute should be construed to produce a harmonious whole (2A Sutherland, Statutory Construction § 46.05 (4th ed., 1973)). Since the legislative intent concerning selection procedures for the one member is not clear from the pertinent language, it is appropriate to use a construction which will avoid inconsistency and promote harmony. The Board of Trustees of the Maine Maritime Academy is one of the ". . . principal public governing and administrative boards concerned with post-secondary education in Maine. . ." and therefore should be treated in the same manner as the Board of Trustees of the University of Maine, the State Board of Education, and the Maine Delegation of the New England Board of Higher Education, to further a consistent and harmonious interpretation. Therefore, it is our opinion that the member of PECOM from the Board of Trustees of the Maine Maritime Academy should be selected in accordance with the procedures of that body, which is consistent with the selection procedure for the similar organizations just listed.

S. KIRK STUDSTRUP
Assistant Attorney General

SKS:jg