

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date August 27, 1975

To Maynard C. Dolloff, Commissioner

Dept. Agriculture

From Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject P.L. 1975, chapter 517

You have asked several questions about P.L. 1975, chapter 517, entitled "An Act to Repeal Milk Control Prices at the Retail Level." Your first question is whether the present members of the Maine Milk Commission [hereinafter referred to as the Commission] may continue to serve in that position until their successors are appointed and qualified. The answer to that question is negative.

Under 7 M.R.S.A. § 2952 as it presently reads, 2 members of the Commission must be producers, one member must be a dealer, one member is required to be a producer-dealer, and one is required to be the owner of a retail store. (The definitions of the above terms are set forth in 7 M.R.S.A. § 2951.) Under Section 1 of P.L. 1975, Chapter 517, which will become effective on October 1, 1975, and which will repeal and replace 7 M.R.S.A. § 2952, the Legislature has expressly stated that no member of the Commission, while serving as a member of the Commission, shall be a producer, a dealer, a producer-dealer or the owner of a retail store or have any official business or professional connection with the above.

The courts have stated that the Legislature has the power to shorten or terminate the term of one holding public office. See Lanza v. Wagner, 229 N.Y.S.2d 380 (N.Y., 1962). It seems clear that, with regard to the Maine Milk Commission, the Legislature intended to exercise this power and to shorten the terms of the incumbent Commission members, by having their terms expire on the date P.L. 1975, Chapter 517 becomes effective, October 1, 1975. Had the Legislature intended that their terms would continue beyond that date it is likely that it would have included in Chapter 517 a transitional clause, as was done, for example, in P.L. 1975, Chapter 608, "An Act to Reorganize the State Personnel Board."

With regard to the second portion of question #1 (wherein you ask what effect on the enforcement of the Milk Commission Law there would be if a significant time interval lapsed between October 1, 1975, and the qualification of new Commission members) we respectfully respond that at the present time the question is speculative.

I understand your second question to be whether the present milk price orders of the Commission will remain in effect after October 1, 1975 (the date on which P.L. 1975, Chapter 517 will become effective)

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or whether the present milk price orders will terminate on that date. The answer to question #2 is that the present milk price orders of the Commission will remain in effect after October 1, 1975, until such time as they are superseded by new milk price orders. The present milk price orders were established by the Commission pursuant to the procedure set forth in 7 M.R.S.A. § 2954. It is true that Section 3 of P.L. 1975, Chapter 517 sets forth a different procedure for establishing and changing milk price orders. However, the present milk price orders of the Commission are not expressly repealed by any provision of P.L. 1975, Chapter 517. As the court stated in California Drive-In Restaurant Ass'n. v. Clark, 140 P.2d 657 (Cal., 1943), there is a presumption against the implied repeal of a regulation by a subsequent act of the legislature. See 2 Am. Jur.2d, Administrative Law, § 300; see also State v. Taplin, 247 A.2d 919 (Me., 1968). In addition, the court in California Drive-In Restaurant Ass'n., supra, stated that "[t]he purpose and object sought to be accomplished by legislation is an important factor in determining the legislative intent." 140 P.2d at 660. Accord State v. Inman, 301 A.2d 348 (Me., 1973). It is reasonable to assume that it was not the purpose of the Legislature to create a period after October 1, 1975, during which there would be no milk price orders in effect. Such a hiatus would likely cause confusion and some of the problems which the Legislature hoped to eliminate by the establishment of the Maine Milk Commission.

You ask next whether the present classified employees of the Commission may continue in employment after October 1, providing they satisfy what you term the "conflict of interest" provision of Section 1 of P.L. 1975, Chapter 517. There is nothing in the statute to prevent the present classified employees from continuing their employment with the Commission if they are able to satisfy the requirements set forth in the statute regarding "conflict of interest."

You also ask who has the authority to determine whether or not a conflict of interest exists. The appointing authority has the initial power to make this determination.

Your last question is whether pursuant to Section 1 of P.L. 1975, chapter 517, the Attorney General's Office will be providing legal services for the Commission. The Attorney General's Office will be performing the Commission's legal services.

  
JOSEPH E. BRENNAN  
Attorney General

JEB:mfe

cc: Hon. James B. Longley