

MAINE STATE LEGISLATURE

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September 25, 1975

Maynard C. Dolloff, Commissioner

Agriculture

David Roseman, Assistant

Attorney General

Inconsistencies between P.L. 1975, Chapter 477 and P.L. 1975, Chapter 575

In your memo of September 9, 1975, you have raised certain questions about the conflicts between P.L. 1975, Chapter 477 and P.L. 1975, Chapter 575. I understand your questions to be whether you have the authority to appoint the members of the Board of Veterinary Medicine and, if so, how many members are to comprise that Board. As is more fully explained below, it is the opinion of this Office that the Board is to be composed of 6 members (5 veterinarians and 1 representative of the public); furthermore, the members of the Board shall be appointed by the Commissioner of Agriculture.

The statutes relating to the Veterinary Board are presently found in 32 M.R.S.A. Chapter 71 (32 M.R.S.A. § 4701 et seq). 32 M.R.S.A. § 4751 presently reads in applicable part as follows:

"The Board of Veterinary Examiners . . . shall consist of 3 members who shall be veterinarians, appointed by the Governor with the advice and consent of the Council. . . ."

P.L. 1975, Chapter 477 entitled "An Act Relating to Maine Veterinary Practice" will become effective on October 1, 1975. Section 3, Chapter 477 of P.L. 1975, repeals 32 M.R.S.A. Chapter 71. Section 4 of Chapter 477 enacts 32 M.R.S.A. Chapter 71-A (32 M.R.S.A. § 4851 et seq) in its place. 32 M.R.S.A. § 4854 is enacted to read in applicable part as follows:

"There is established in the Department of Agriculture a State Board of Veterinary Medicine, which shall consist of 5 members, appointed by the Commissioner of Agriculture, all of whom shall be licensed Maine veterinarians. . . ."

P.L. 1975, Chapter 575 is entitled "An Act to Require Appointment of a Public Member to all Professional and Occupational Licensing Boards." Section 49 of P.L. 1975, Chapter 575, which becomes effective on October 1, 1975, provides that 32 M.R.S.A. § 4751 is amended to read in applicable part as follows:

"The Board of Veterinary Examiners . . . shall consist of ~~3~~ 4 members who shall ~~be veterinarians~~ appointed by the Governor with the advice and consent of the Council. . . . One of the members shall be a representative of the public. [3 members shall be veterinarians]. . . ."

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The 107th Legislature has, thus, enacted two statutory provisions which are inconsistent. In Opinion of the Justices, 311 A.2d 103 (1973) the Maine Supreme Court dealt with the inconsistencies between Chapter 460 and Chapter 569 of the Public Laws of 1973. One of the issues before the Court was whether the Land Use Regulation Commission was to be composed of 8 members (as provided by Chapter 460) or 7 members (as provided by Chapter 569). The Court said, among other things, that when two statutes are inconsistent the attempt must be made ". . . to perceive in both of the legislative enactments a comprehensive legislative design. . . and utterly irreconcilable inconsistencies are then to be dealt with in a manner which tends to promote the underlying legislative purposes. . ." 311 A.2d at 108. The Court said, in addition, that the statute which treats ". . . the common subject-matter in the more direct, special and minute manner will usually be held to prevail." 311 A.2d at 108. Furthermore, the Court in reaching its decision analyzed what objective the 106th Legislature sought to accomplish in enacting Chapter 460 and what objective it sought to accomplish in enacting Chapter 569.

In P.L. 1975, Chapter 477, the Legislature was focusing solely and specially upon the Veterinary Board and the practice of veterinary medicine. There can be no question that it was the intent of the Legislature to increase the membership of the Board from 3 veterinarian members to 5 veterinarian members, and to grant the Commissioner of Agriculture, rather than the Governor, the authority to appoint new Board members. (See 32 M.R.S.A. § 4854).

In P.L. 1975, Chapter 575, on the other hand, the Legislature did not focus solely and specially upon the Veterinary Board. Rather, as the Statement of Fact to Committee Amendment "A" to L.D. 361 indicated (L.D. 361, as amended, was enacted as P.L. 1975, Chapter 575), "[t]he purpose of this amendment is to provide for a representative of the public on every licensing board which does not presently have such a representative. A public member is added to every board so that no present board member is displaced. . . ." There is nothing to indicate that the Legislature sought to accomplish any other objective in enacting Chapter 575.

Section 49 of Chapter 575 states that "32 M.R.S.A. § 4751, first ¶, is amended to read:" No reference is made to Section 3 of P.L. 1975 Chapter 477 which repealed 32 M.R.S.A. § 4751, or to Section 4 of Chapter 477 which enacted a new statutory provision relating to the number of Board members and the process of appointment to the Board. Section 49 of Chapter 575 also refers to the Board as the "Board of Veterinary Examiners." This, however, conflicts with Sections 1, 2 and 4 of Chapter 477 wherein the name of the Board is changed to the "Board of Veterinary Medicine."

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In order to harmonize these inconsistencies and applying settled rules of statutory construction, we attribute the references in Chapter 575 to 4 members and to appointment by the Governor to "loose draftsmanship," 311 A.2d at 110, and that Chapter 477 controls the number of veterinary members of the Board and the appointment process.

However, an attempt must be made to fit Sec. 49 of Chapter 575 into the comprehensive legislative design. In Opinion of the Justices, supra, the Court said that when two statutes deal with the same subject matter and are enacted at the same session of the legislature, neither will be considered as causing a total repeal of the other. "[R]ather, as many of the provisions of each enactment will be given full effectiveness as are consistent with a single harmonious whole which may be reasonably perceived as the overall legislative purpose." 311 A.2d at 108. As noted earlier, it was clearly the intent of the Legislature, as expressed in Chapter 575, to add a public member to each licensing board. And it was clearly the intent of the Legislature, as expressed in Chapter 477, to increase the number of veterinarian members of the Board from 3 to 5. It is reasonable to say, therefore, that when the two statutes are construed together, the overall legislative purpose was to increase the present Board membership from 3 veterinarian members to 5 veterinarian members and to add to that one public member, giving the Board a total of 6 members.

In order to eliminate the inconsistencies between P.L. 1975, Chapter 477 and Section 49 of P.L. 1975, Chapter 575, this Office recommends that Section 49 of Chapter 575 be clarified at the Special Session of the 107th Legislature.

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DR:mfe

cc: Honorable James B. Longley, Governor
David Silsby