

# MAINE STATE LEGISLATURE

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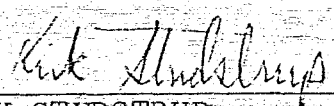
Inter-Departmental Memorandum Date June 2, 1976

To Frank M. Hogerty, Acting Commissioner Dept. Business Regulation  
From S. Kirk Studstrup, Assistant Dept. Attorney General  
Subject Oil Burner Men and Electricians' Licensing Boards

This memorandum responds to an opinion request by former Commissioner Ralph H. Gelder, dated May 18, 1976. Mr. Gelder's question concerned the status of his appointees as Executive Secretary to the Oil Burner Men's Licensing Board and the Electricians' Examining Board after his resignation as Commissioner of Business Regulation. Although Mr. Gelder is no longer the Commissioner of Business Regulation, the question is still relevant to the Boards in question.

Both statutes governing the composition of the Boards state that the respective Board ". . . shall consist of an executive secretary, who shall be the Commissioner of Business Regulation or a representative appointed by said commissioner, with the approval of a majority of the board . . .," in addition to the other "appointive members." 32 M.R.S.A. §§ 1151 and 2351. There is no specification as to the tenure of executive secretaries who are appointed representatives of the Commissioner. Nor is there any legislative history of record to aid in construction. However, it is clear that each successive Commissioner of Business Regulation would have the right to determine whether he prefers to personally fill the position of Executive Secretary or to appoint a representative, regardless of his predecessor's preference. This authority would not extend to an acting commissioner who has not been appointed and confirmed in accordance with the procedure set forth in 10 M.R.S.A. § 8001, and who performs the duties of Commissioner on an interim basis.

It is our opinion that an appointed representative Executive Secretary for either of the subject Boards serves at the pleasure of the Commissioner of Business Regulation, whoever the Commissioner may be. The appointment would not end with the departure of the appointing Commissioner. However, as soon as a new Commissioner is duly appointed and confirmed, the new Commissioner may change representatives, subject to approval by a majority of the Board, or decide to serve in this capacity personally. This procedure provides greater continuity in the administration of the Boards during periods when new Commissioners are being appointed, a goal which has been frequently addressed by the Legislature, e.g. 5 M.R.S.A. § 3.

  
S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:jg