

MAINE STATE LEGISLATURE

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To William R. Adams, Jr., Commissioner Dept. Environmental Protection
From Donald G. Alexander, Deputy Dept. Attorney General
Subject Commissioner's Power to Vote: P.L. 1976, c. 771, § 419.

By memorandum dated July 29, 1976, you posed the question as to whether, under statutes currently in effect, the Commissioner of the Department of Environmental Protection, as Chairman of the Board of Environmental Protection, is prohibited from voting entirely or may only vote in case of a tie.

The most recently enacted legislation, P.L. 1975, c. 771, § 419 (1976), amends 38 M.R.S.A. § 361 to specify that the Commissioner of the Department of Environmental Protection "shall be a non-voting member of the board." That legislation is effective January 4, 1977. Legislation currently in effect, 38 M.R.S.A. § 342(1), specifies that the Commissioner of the Department of Environmental Protection is a member of the Board of Environmental Protection with a right to vote only in cases of a tie. The two pieces of legislation are clearly inconsistent. Based on that inconsistency, we would provide the following advice:

1. The Commissioner of the Department of Environmental Protection is clearly authorized to vote to break ties until January 4, 1977, the effective date of chapter 771.

2. Once chapter 771 becomes effective, unless it is amended, the Commissioner of the Department of Environmental Protection can no longer vote. Where an inconsistency in legislation appears, later enacted legislation will prevail over earlier enacted legislation unless there is a possible way to resolve the inconsistency, which does not appear here.

3. After January 4, 1977, if there is a tie vote at the Board of Environmental Protection, the effect of the tie vote will be that the motion proposed dies. A tie vote would thus have the same effect as a negative vote. This is a general doctrine widely applied in interpreting the effect of tie votes. See Mason, Manual of Legislative Procedure, § 513: "When the vote for and the vote against any proposition are equal, there is a tie vote. A tie vote decides nothing but leaves the situation unchanged." And, "No affirmative action can be taken except by a majority."

It may be appropriate to seek legislation to deal with this apparent inconsistency early in the next session.

DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec
cc: David Silsby