

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Public Administrator 1/1

18 M.R.S.A. 1651

Dink

Term of Office

STATE OF MAINE

Inter-Departmental Memorandum Date September 8, 1976

To Doris Hayes, Deputy Secretary of State Dept. Secretary of State

From S. Kirk Studstrup, Assistant Dept. Attorney General

Subject Status of Public Administrators

Your memorandum of September 3, 1976, asked whether the office of a Public Administrator is a civil or judicial office for purposes of determining the term of office.

Although the statutory term for a public administrator is four years, if this is considered a "civil office" the incumbent would remain in office until a successor is appointed and qualified, as you have correctly noted. 5 M.R.S.A. § 3. This question has been addressed to our office before, and I am enclosing a copy of an opinion dated May 16, 1969, which concluded that a public administrator is a "civil officer." We have reviewed and confirmed this previous opinion.

S. Kirk Studstrup

S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

Encl.



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

May 16, 1969

Honorable Charles T. Trumbull
Executive Council Chambers
State House
Augusta, Maine

Dear Councillor Trumbull:

You have presented two questions for consideration involving:
(1) Public Administrators and (2) the State Contingency Account.

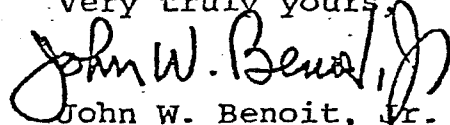
(1) Does a public administrator of a county, appointed for a term of 4 years pursuant to 18 M.R.S.A. § 1651, serve until his successor is appointed and qualified, or does the term of a public administrator expire by operation of law at the conclusion of 4 years? The Governor, with the advice and consent of the Executive Council, appoints public administrators in each of the counties of the State for terms of 4 years. In order to determine whether a public administrator is permitted to hold office for a term exceeding the statutory 4-year period, it is necessary to determine whether a public administrator is a civil officer within the meaning of 5 M.R.S.A. § 3. Section 3 permits a civil officer to hold office during the term for which he is appointed and for the further period of time until his successor in office is appointed and qualified. A public administrator has been regarded as a public officer. Los Angeles County v. Kellogg, 146 Cal. 590, 80 P. 861; and In Re Miller's v. State, 5 Cal. 2d 588, 55 P. 2d 491. A civil officer is one regarded as an officer who is in public service but who is not of the military. U. S. v. American Brewing Co., 296 F. 772, and State v. Clarke, 21 Nev. 333, 31 P. 545. We conclude that a public administrator is a civil officer and, therefore, holds office during the term for which he is appointed and until his successor in office has been appointed and qualified.
5 M.R.S.A. § 3.

May 16, 1969

(2) You next ask whether amounts from the State Contingent Account may be allocated to a state department for one of the reasons set forth in 5 M.R.S.A. § 1507, in anticipation of the department's receipt of future revenues, with a proviso that such allocation be reimbursed in the same fiscal year that the allocation occurs? We answer in the affirmative. The third sentence of § 1507 provides that the Governor and Executive Council shall determine the necessity for allocations from the State Contingent Account. In the event that the allocation is reimbursed by the department in the same fiscal year in which that allocation occurs, and provided the allocation is made for a purpose specified in § 1508, it appears that the making of such an allocation in anticipation of the receipt of revenues and its reimbursement would not be illegal. Whether one of the conditions specified in § 1508 exists as a condition precedent to the allocation, is a question of fact to be determined by the Governor and Executive Council in the exercise of their discretion. Vandegrift v. Riley, 220 Cal. 340, 30 P. 2d 516.

Thank you for your attention.

Very truly yours,



John W. Benoit, Jr.
Assistant Attorney General

JWBJr:H