

MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date November 16, 1976

Joseph Hochadel

Dept. Executive

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject Term of Retirement Board Member

You have asked what the term of office will be for a person recently nominated by the Governor to be one of the three public representatives on the Board of Trustees of the Maine Retirement System which the Governor is responsible for appointing. The answer is that on appointment of a representative by the Governor, which may be before or after confirmation by the Council, the Governor shall designate the term of the representative as ending on either December 31, 1976, December 31, 1977, or December 31, 1978.

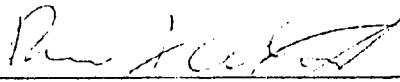
You indicate that the term of office for the seat on the Board for which the present nomination has been made expired on September 19, 1976. When that term began, the statute governing the Board specified only that members of the Board shall serve for terms of three years. 5 M.R.S.A. § 1031(1). The 107th Legislature, however, amended the statute so as to insure that the terms of the trustees will be staggered. Laws of Maine of 1975, ch. 622, § 7 (1975). In particular, the new statute specifies that the three representatives appointed by the Governor shall serve for terms expiring December 31, 1978, December 31, 1977, and December 31, 1976, "as designated by the Governor on appointment."*/ This new statute became effective on January 1, 1976. Laws of Maine of 1975, at 1886. Thus, the answer to your question is that the Governor shall fix the term of the present nominee by making the appropriate designation from among the three options on appointment.

No doubt the confusion which prompted your question derives from the form in which the statute appears in the current supplement to the Maine Revised Statutes Annotated, where the publisher, The West Publishing Company, included the following statement preceding the section in question: "Text of subsection 1 effective January 4, 1977." The reason for the publisher's inclusion of this statement is undoubtedly that the section was amended a second time during the 1976 Special Session of the Legislature as part of a statute generally redistributing the confirmation powers of the abolished Executive Council among other parts of

*/ The term "appointment" refers to the ministerial act performed by the Governor after his nominee has been confirmed by the Council. Thus, the Governor is not required by law to indicate the length of term prior to confirmation, but he may do so, of course, if he should so desire to assist the nominee and the Council.

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the Legislature. 1976 Maine Legislative Service, ch. 771, § 58 (1976). Since the constitutional amendment abolishing the Executive Council does not take effect until January 4, 1977, ME. CONST., Amendment CXXIX, the statute redistributing the powers of the Council was not made to become effective until that time. Thus, the section of that statute amending Section 1031(1) is not yet effective and the Council shall continue to exercise confirmation power for members of the Board until next January 4. But the remainder of Section 1031(1), including the staggered term provisions, remain unaffected by the Executive Council Act. Thus, the statement of the West Publishing Company (which, of course, is not law), is incorrect.



DONALD G. ALEXANDER
Deputy Attorney General

DGA/cc

cc: William Blodgett