

MAINE STATE LEGISLATURE

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Museum Director's Removal

STATE OF MAINE

State Employees

Removal of Unclassified Person

Inter-Departmental Memorandum Date March 9, 1977

20 MRSA § 1-B

To H. Sawin Millett, Jr., Commissioner

Dept. Educational & Cultural Services

From Waldemar G. Buschmann, Assistant Attorney General

Dept. Attorney General

Subject 20 MRSA § 1-B, sub-§ 1; Director, State Museum Bureau

QUESTION: What procedures must be adhered to in order to remove a director of the State Museum Bureau?¹

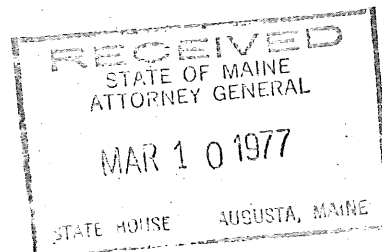
ANSWER: Pursuant to 20 MRSA § 1-B, sub-§ 1, the Maine State Museum Commission may remove the director for cause subject to the approval of the Commissioner of the Department of Educational and Cultural Services. The Commission shall give notice to the director of the charges made against him and shall conduct a hearing on those charges. If, after the hearing, the Commission finds cause to remove the director, they may vote to do so. The Commission's findings and its vote shall be forwarded to the Commissioner who shall either approve or disapprove the Commission's vote to remove. Although the Commissioner's role is not that of an appellate body, it is my opinion that the director may not be removed unless the Commission's vote is approved by the Commissioner.

REASONS: 20 MRSA § 1-B, sub-§ 1, provides that:


"The State Museum Bureau shall be under the direction of a director who shall be qualified by training or by experience in museum work and shall be appointed by the Maine State Museum Commission with the approval of the commissioner to serve for an indefinite term, subject to removal for cause."

It has long been an established point of law with regard to administrative positions that the power of appointment carries with it the power to remove where no alternative removal mechanism is specified by statute or the Constitution. Att. Gen. Rep. 1951-54, p. 99; Sessions v. State of Connecticut. D.C. Conn. 293 F. Supp. 834, at 837 (1968), affd., C.A., 404 F. 2d. 342.

¹Oral request by the Commissioner of the Department of Educational and Cultural Services.



The Legislature specified in sub-§ 1 that the director may only be removed "for cause." The Maine Supreme Judicial Court has held that the phrase "removal for cause" contemplates and requires notice and hearing. Joyce v. Webber, Et Al. 157 Me. 234, at 237 (1961); Andrews v. Police Board, 94 Me. 68, at 77 (1900). Therefore, since the Commission must find that cause for the removal of the director exists, it is my opinion that it must give notice to the director of the charges and must provide him with a hearing on those charges.



Waldemar G. Buschmann
Assistant Attorney General

WGB:va

cc: Don Alexander ✓