

# MAINE STATE LEGISLATURE

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*Legislature: Pay, members not serving full term*  
*3 M.R.S.A. 2*

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June 9, 1977

William H. Garside  
Legislative Administrative Officer  
State House  
Augusta, Maine 04333

Re: Compensation for Legislators who do not serve full terms.

Dear Mr. Garside:

This responds to your request for advice regarding certain questions which have arisen as to the appropriate compensation to be paid to legislators under certain conditions which may result in two legislators representing one district within one term, or otherwise not serving a full term. Your questions will require interpretation of certain provisions of 3 M.R.S.A. § 2, which read in pertinent part as follows:

"Each member of the Senate and House of Representatives, beginning with the first Wednesday after the first Tuesday of January, 1977 and thereafter, shall receive \$4500 in the first year and \$2500 in the second year of each biennium. . . . "

"Each Legislator is entitled to mileage on the first day of the session, and such amounts of his salary and expenses at such times as the Legislature may determine during the session, and the balance at the end thereof."

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Specifically, the fact situations you pose are as follows:

1. A legislator begins serving a term, dies, and is replaced by another legislator.

In this situation, it is our understanding that it has been the past practice of the Legislature and the Legislative Finance Office to pay the new legislator that portion of the deceased legislator's compensation which had not previously been paid to the deceased legislator. This would appear to be a reasonable interpretation of the provisions of law. We would note that the Legislature does have some discretion in interpreting these provisions, as the question of one legislator replacing another does not appear to have been addressed or contemplated by the Legislature in drafting 3 M.R.S.A. § 2 and § 2 does specify that times of payment is a question for the Legislature.

2. Because of failure of a candidate to qualify, or for some other reason, a seat is vacant at the beginning of the session and is subsequently filled.

In this circumstance, it is our understanding that it has been the practice to grant the legislator first filling the previously vacant seat the full authorized compensation. This likewise would appear to be an appropriate interpretation. The Legislature may reasonably have been presumed, by the provisions of 3 M.R.S.A. § 2, to have authorized payment of a sum certain, \$4500 for the first annual session and \$2500 for the second annual session, to the person or persons filling each seat. Accordingly, where compensation has not previously been paid to any person, it would be appropriate to pay the full compensation authorized for a particular seat to a person first filling that seat as a properly qualified and duly elected representative.

3. A seat is filled at the start of the session by one legislator and, subsequently, after review of election returns it is determined that another legislator was the winner of the election and should be seated.

This case has similarities to the first case where one legislator occupies a seat and is subsequently replaced by another legislator. Further, if we assume, as indicated in response to question number 2 above, that the provisions of 3 M.R.S.A. § 2 are designed to provide a set rate of compensation for each assigned seat, it would appear appropriate to cause division of the funds in this circumstance in the

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same manner as in number one. Accordingly, we believe it would be an appropriate interpretation to pay one legislator who replaces another legislator as a result of a change in election or qualifications determinations the remainder of the salary specified in 3 M.R.S.A. § 2 which has not been paid to the legislator first occupying the seat. This would result in consistent treatment of legislative seats occupied by more than one person and consistency with past practice regarding such seats.

The manner of computing the times of payment and thus how much one legislator has earned at the time he ceases to occupy a seat and how much the new legislator is due is a matter for the discretion of the Legislature and the Legislative Finance Office. However, those calculations may be aided by the provisions of 3 M.R.S.A. § 2 which specify the projected number of legislative days for the first and second regular legislative sessions.

I hope this information is helpful.

Sincerely,

  
DONALD G. ALEXANDER  
Deputy Attorney General

DGA/ec

cc: Hon. Joseph Sewall  
Hon. John L. Martin  
Hon. Jerrold Speers  
Hon. David G. Huber  
Hon. Gerard P. Conley  
Hon. Peter W. Danton  
Hon. James E. Tierney  
Hon. Rodney S. Quinn  
Hon. Linwood E. Palmer, Jr.  
Hon. William J. Garsoe