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*University of Maine Terms of Trustees
State Employees Change of Tenure or Terms by Law*

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 30, 1977

Doris Hayes, Deputy
Secretary of State
State Office Building
Augusta, Maine 04333

Re: University of Maine Board of Trustees

Dear Ms. Hayes:

This responds to your memorandum of June 23, 1977, seeking advice as to the terms of certain members of the University of Maine Board of Trustees.

In that memorandum you present several fact situations and indicate that, in some cases, clerical errors may have been made in commissions issued to persons appointed as University of Maine Trustees. You suggest that the general import of these clerical errors is to indicate terms of appointment for certain members which are longer than authorized by statute. Based on these facts, you ask our advice as to the terms of certain members.

Prior to discussion of specific fact situations, it may be well to develop certain principles which are relevant to the analysis of the terms of office statutes and amendments thereto.

First, with regard to any public office not specified in the Constitution, Maine law expressly states that the Legislature is free to abolish the office, make its term longer or shorter, adjust compensation up or down, or change the authority of the office or other matters affecting the office as it sees fit in furtherance of the public good.

"All officers, except when legislative authority is limited or restricted by constitutional provisions, are subject to the will of the Legislature. There is, with the above exception, no

vested right in an office or its salary. The office may be abolished. The mode of appointment may be changed. The length of time of official existence may be shortened. The compensation for official services may be diminished...." Prince v. Skillin, 71 Me. 361, 365 (1880)

See also, Paine, County Attorney v. State of Maine, 258 A.2d 266 (Me., 1969); Ross v. Hanson, 227 A.2d 606 (Me., 1967); State of Maine v. Amos K. Butler, 105 Me. 91 (1909); Rounds, Petitioner v. Smart, 71 Me. 380 (1880); Farwell v. Rockland, 62 Me. 296 (1866).

Accordingly, legislative authority in this area is well established. Further, the Legislature has felt free to make changes in offices in many areas, for example, in 1975 the Legislature abolished the Maine Milk Commission and thus the terms of all of its then sitting members and created an entirely new Maine Milk Commission with an entirely new membership, P.L. 1975, c. 517.

In furtherance of its authority, the Legislature, in 1968, by P. & S.L. 1967, c. 229 § 2, repealed and replaced the prior law (P. & S.L. 1951, c. 122) governing appointment of the Board of Trustees of the University of Maine. By the 1968 amendment, the Legislature sought to establish a University of Maine Board of Trustees of 15 members including the Commissioner of Education ex-officio and 14 members appointed to staggered 7-year terms such that the terms of two appointive members of the Board would terminate each year. Vacancies on the Board were to be filled by the Governor with advice and consent of the Council for the unexpired balance of the term.

The 1968 amendments provided that the terms of office of the new Trustees would commence 30 days after the effective date of the act at which time the terms of all then current Trustees would terminate. The act was effective April 26, 1968. Accordingly, the staggered terms of the 14 new Trustees commenced May 26, 1968, and their initial terms were for terms of 1, 2, 3, 4, 5, 6 and 7 years from that date.

Apparently believing that this law needed clarification in light of the appointment practices which prevailed subsequent to its enactment, the Legislature further amended and clarified this provision by adoption of P.L. 1973, c. 625, § 280, which amendment became effective July 5, 1973.

The 1973 amendments provided as follows:

"Sec. 280. P. & S.L., 1865, c. 532, § 4, amended. The 7th and 8th sentences of section 4 of chapter 532 of the private and special laws of 1865, as last repealed and replaced by section 2 of chapter 229 of the private and special laws of 1967, are repealed and the following enacted in place thereof:

Subsequent terms of office shall be fixed at 7 years and each term shall expire on May 26th of the appropriate year. Until such time as a successor trustee has been appointed and qualified to assume office, a term is deemed to be vacant. Any vacancy shall be filled by the Governor with the advice and consent of the Council for the unexpired balance of the term. Trustees are eligible for reappointment only once, except that any trustee appointed to fill a vacancy where the unexpired balance of the term is 3 years or less, shall be eligible for reappointment for 2 full 7-year terms. Trustees shall retire on reaching the age of 70. In order to restore and maintain rotation of terms of office of trustees, an incumbent trustee who was appointed for a term of 7 years at a time subsequent to the expiration of the term of his predecessor in office, shall be deemed to have commenced his 7-year term upon the date of the expiration of the term of office of his predecessor rather than from the date of his appointment and qualification."

In order to answer the questions posed, several provisions of this amendment need to be interpreted or commented upon.

On its face, the term "subsequent terms of office" could have two meanings. First, it could mean terms of office subsequent to the effective date of the 1973 amendments, thus indicating that different termination dates were contemplated under the prior law. Alternatively, it could mean those full terms of office subsequent to the initial staggered terms. Reviewing this terminology in the context of the 1968 amendments, it appears that the latter construction is preferable. The 1968 amendments utilized the term "subsequent

appointments shall be for full 7-year terms." In that context it is clear that the term is intended to reference appointments subsequent to the shorter term staggered appointments. We believe this terminology and intent was carried over into the 1973 act. Therefore, it cannot be construed to suggest that termination dates other than May 26, are appropriate for appointments made prior to July 5, 1973.

In 1973 amendments also added a specific reference to the May 26 date as the date upon which terms of office terminate. However, this specification of the date merely confirms the intent of the 1968 amendments that all terms of office of the University of Maine Board of Trustees terminate on a date certain. Accordingly, we find that the terms of office on the University of Maine Board of Trustees terminate on May 26 of the appropriate year, regardless of whether the appointments to the Board were made pursuant to the 1968 amendments or the 1973 amendments.

The last sentence of the 1973 amendments also indicated the clear intent of the Legislature that there be rotation of terms with two appointments each year (or at least two terms of office expiring each year). Accordingly, the Legislature made clear what was implicit in the 1968 amendments, that is that 7-year terms of appointment are deemed to take effect on the date of expiration of the term of office of the predecessor Trustee, not upon the date of appointment. Further, even if it were a change in the prior law, and we do not suggest that it was, the last sentence of the 1973 amendment could appropriately limit the terms of members of the Board of Trustees in accordance with the legal principles discussed initially in this memorandum.

With these general principles and examination of statutory history as background, we address the specific question regarding specific members which you have posed:

1. John C. Donovan. You indicate that John C. Donovan was appointed June 28, 1972, to replace a Trustee whose term had expired May 26, 1972. Mr. Donovan's commission specifies an expiration date of June 28, 1979. You indicate that you believe that Mr. Donovan's commission should specify an expiration date of May 26, 1979. That is correct. The May 26, 1979, date, 7 years from the date of expiration of the prior term of office governs. The June 28, 1979, date, 7 years after date of appointment, is incorrect. The commission should specify an expiration date of May 26, 1979, and, regardless of the technical error in the commission, the term of office of Mr. Donovan would expire on May 26, 1979.

2. Kenneth H. Ramage. You indicate that Kenneth H. Ramage was appointed on October 20, 1971, to replace a Trustee whose term had expired May 26, 1969. Mr. Ramage's commission specifies a term expiration date of October 20, 1978. You indicate that it would appear that Mr. Ramage's commission should specify an expiration date of May 26, 1976. This is correct, for the same reasons as stated in the case of Mr. Donovan. Mr. Ramage's term should be considered to run for 7 years from the date of expiration of the term of the Trustee whom Mr. Ramage replaced. Thus, his term of office did expire on May 26, 1976.

3. Nils Wessell. You indicate that Mr. Wessell was appointed October 20, 1971, to a previous term which he had held and which expired on May 26, 1971. His commission specifies a term expiration date of October 20, 1978. You indicate his commission should specify an expiration date of May 26, 1978. This is correct, for the reasons indicated above.

4. Francis A. Brown. You indicate that Mr. Brown was appointed November 20, 1973. Mr. Brown replaced a Trustee who was appointed September 20, 1972, to a term which commenced May 26, 1972. The Trustee so appointed terminated his office on August 24, 1973, upon reaching his 70th birthday. Subsequently Mr. Brown was appointed to fill the remainder of the term. Mr. Brown's commission indicates a date of expiration of office of May 26, 1980. You indicate that you believe that Mr. Brown's commission should indicate an expiration date of May 26, 1979. This is correct. As Mr. Brown is filling a term of office which commenced with the expiration of the prior term on May 26, 1972, his appointment should be for 7 years from that date, thus expiring on May 26, 1979.

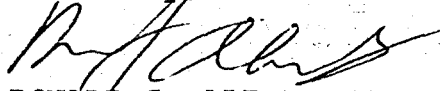
You also note that appointments have been posted to replace Trustees Cynthia A. Murray-Beliveau and Carleton Day Reed, Jr., both persons filled terms which were intended to expire in 1977. Cynthia Murray-Beliveau's commission specified October 21, 1977, as the expiration date of her term; Carleton Day Reed, Jr.'s commission specified an expiration date of July 8, 1977. Both commissions should have specified May 26, 1977, as the date of termination of office.

There is no question as to the compensation paid or validity of acts of the University Board of Trustees or individual Trustees who may have served after the statutory termination date for their appointments as clearly any and all parties have acted in good faith based on the provisions of their commissions and the general assumption of the validity of their official acts. See 5 M.R.S.A. § 3 relating to service after expiration of terms.

Doris Hayes
June 30, 1977
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I hope this information is helpful.

Sincerely,



DONALD G. ALEXANDER
Deputy Attorney General

DGA:jg