

# MAINE STATE LEGISLATURE

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STATE OFFICE (S) Terms of Appointment  
Appointments Terms  
Land Use Regulation Commission Terms of Members  
12 M.R.S.A. § 683

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AUGUSTA, MAINE 04333

September 7, 1977

To: Kenneth M. Stratton, Director Land Use Regulation Commission  
From: Joseph E. Brennan, Attorney General  
Subject: LURC Commissioners' Staggered Terms

You have asked for an opinion concerning an apparent inconsistency between the staggered term provisions of Title 12, M.R.S.A. § 683 and the timing of recent appointments of members of the Land Use Regulation Commission.

It is our understanding that in several instances the Governor has appointed Commission members to fill vacancies created by those who left office before their terms had expired. Apparently, these new Commission members were appointed by the Governor to full four-year terms. This procedure resulted in a reordering of term expiration dates contrary to the mandate of 12 M.R.S.A. § 683 that "The Commission shall consist of 7 public members, . . . who shall be appointed . . . for staggered 4-year terms." That statute sets forth a mechanism by which the staggered term system was to be established and perpetuated through initial appointments of varying lengths. A legislative directive to maintain staggered terms on various governmental bodies is a well-established practice justified on such grounds as continuity, gradual change in the personnel of a Commission, and the maintenance of an experienced majority at all times. Therefore, taking into account the statutory language and the apparent underlying legislative intent, we must conclude that the appointment of LURC members to full terms despite the fact that their predecessors' terms had not expired does not conform with lawful procedure. See Attorney General Opinions of June 30, 1977 to Doris Hayes, Deputy Secretary of State and December 18, 1968 to Edward Hinckley, Indian Affairs; see also Heyward v. Long, 183 S.E. 145, 154-5 (S.C. 1935).

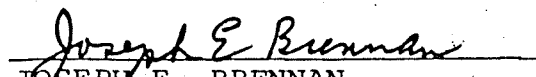
Accordingly, those members of LURC recently appointed to fill positions vacated by members who left office before their terms had expired must be regarded as appointed only to fill out the unexpired

portions of their predecessors' terms. Where the predecessor's term has already expired, the member presently serving may legally remain in office as a "holdover" from the previous term, 5 M.R.S.A. § 3, and perform all the duties thereof until a successor is properly appointed to a full term. The beginning date of the full term is the date of expiration of the preceding term, without regard to the time served by the holdover. Thus the required rotation is maintained.

For future reference, it should be noted that nothing prevents, and the doctrine of "prospective appointments"<sup>1/</sup> permits, appointments to LURC to be made before an actual vacancy occurs. Where a vacancy is expected within a few days or weeks and where the appointor's authority to appoint has not expired prior to the time at which the appointment will become effective, an appointment may be made in advance of the actual vacancy. Moreover, in certain circumstances, appointment to an unexpired term and to the succeeding full term may be made at the same time, though as separate acts. That is, where the appointment to the unexpired term is proper as a present appointment and where the appointment to the full term meets the criteria for a proper prospective appointment, the Governor may simultaneously make separate nominations of the same individual to both positions. The separate nominations must be separately considered and voted by the legislature, which could of course confirm or deny for one or both positions. See our Opinions of August 29, 1977 to Governor Longley, of which a copy is attached.

With respect to LURC's present situation, the Governor may at any time nominate successors to those four-year terms presently held by holdovers. The holdover members are themselves eligible for nomination. Regardless of whom is appointed, the four-year term begins as of the date of expiration of the previous four-year term. Those members presently serving unexpired portions of terms may be prospectively nominated to full terms, or another person may be so nominated, if the present term expires within a few weeks.

We do not recommend making statutory changes. Section 683 of Title 12 is clear as to the legislative intent to institute and maintain regularly rotating membership on LURC, and the doctrines we have discussed herein, of which the Governor has been advised, are sufficiently established to provide adequate guidance. Amending the statute to adequately reflect these legal rules would make the section inordinately long and extremely complex and could not in the end cover all possible factual variations.

  
JOSEPH E. BRENNAN  
Attorney General

JEB:KE:JG  
Enclosure

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<sup>1/</sup> Accepted in Maine in the case of Pattangall v. Gilman, 115 Me. 344, 98 A. 936, 1916.