

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date December 1, 1977

8 MRSAY 104
32 MRSAY 1151
32 MRSAY 2351

To Alfred W. Perkins, Commissioner

Dept. Business Regulation

From S. Kirk Studstrup, Assistant

Dept. Attorney General

Subject Appointment of Executive Secretaries

You have orally requested my opinion on a question concerning your appointment of executive secretaries to three state licensing agencies, i.e., the Oil Burnermen's Licensing Board, the Electricians' Examining Board, and the Maine Athletic Commission. Your question is whether you may appoint one individual to perform the functions of all three offices. The answer to your question is generally affirmative, subject to the conditions mentioned below.

Statutes governing the organization and composition of the Oil Burnermen's Licensing Board and the Electricians' Examining Board each contain the following provision: ". . . the 'board' shall consist of an executive secretary, who shall be the Commissioner of Business Regulation or a representative appointed by said Commissioner with the approval of a majority of the board," (32 M.R.S.A. §§ 1151 and 2351). It is clear from this provision that the Commissioner, as an individual, may fill both positions, and it is equally clear that his appointed representative, as an individual, may fill both positions. The only difference between the two situations is that the Commissioner is made the executive secretary by statute, while his representative would become executive secretary for either board only upon approval of a majority of the respective board.

The situation with regard to the Maine Athletic Commission is different in that unlike the boards mentioned above, there is no statutory provision for an executive secretary for the Commission. (8 M.R.S.A. §§ 101 et seq.). The Maine Athletic Commission itself consists of three members appointed by the Commissioner of Business Regulation with the advice and consent of the Governor. (Section 101). Furthermore, 8 M.R.S.A. § 104 contains the following provision:

"The Commissioner of the Department of Business Regulation shall employ, subject to the Personnel Law, the personnel that he deems necessary to discharge the duties of the department and shall outline their duties and fix their compensation, subject to the Personnel Law."

It is believed that the reference to the "Department" was intended to be to the "Commission." This provision gives the Commissioner discretion with regard to staffing of the Commission. Therefore, it would be the Commissioner's decision as to whether he wished to employ an individual to perform the functions of an "executive secretary" for the Commission and the identity of that individual.

Afred W. Perkins, Commissioner

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In summary, I find no statutory provision which would prevent the Commissioner from utilizing the services of one individual in the position of "executive secretary" for all three agencies. However, with regard to appointments to the two licensing boards, such appointments would be subject to approval by a majority of the respective board.



S. KIRK STUDSTRUP

Assistant Attorney General

SKS:mfe