

MAINE STATE LEGISLATURE

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To: Real Estate Commission
From: Donald G. Alexander, Deputy Attorney General
Re: Election of Real Estate Commission Chairman

This opinion responds to several questions which have been raised regarding election of a Chairman by the Maine Real Estate Commission.

Presently, the Maine Real Estate Commission consists of the Director, a full-time State employee, and four members appointed by the Governor. The appointed members' terms are staggered so that each year one of them is replaced by a new appointment. 32 M.R.S.A. § 4051-A. "The commission is required to annually elect a chairman, other than the director, from its members." § 4051-A.

The question is the Legislature's intent in enacting the above-quoted language. In other words, may the Commission elect a Chairman more often than once each year? If it may elect a Chairman only once each year, when must this election take place?

In October, 1977, two of the four appointed members of the Commission, including the Chairman, resigned. At the next meeting following the resignations, two remaining appointed members wished to elect a new Chairman. The Director stated he would not participate in this election and declined to vote. A vote was held anyway and one Commissioner was elected by unanimous vote of two members of the Commission.

Shortly after this election, the Governor made appointments to fill the two unexpired terms. The legality of the Chairman's election at this juncture was questioned. This office advised that

the election appeared legal since three members were present. Research indicated that as long as a quorum is present, even if not all those present vote, action taken by an administrative body is proper.

The question was next asked whether the newly-constituted Commission could hold another election for Chairman. The Commission voted to hold a new election at its first meeting in March, 1978, at which time one of its members' terms would have expired and a new member would be appointed. The election took place and another Commissioner was elected Chairman.


The provisions of 32 M.R.S.A. § 4051-A were adopted by enactment of P.L. 1975, c. 547. This language replaced language appearing in § 4051, as a result of the 1964 revision of the Revised Statutes, viz: "The commission immediately upon the qualification of the member appointed in each year shall organize by selecting from its members a chairman. . . ." This language can be traced at least to the 1954 revision, R.S. 1954, c. 84, § 1.

An examination of the legislative history of P.L. 1975, c. 547, including the Statement of Fact on the original legislative document (L.D. 424), reveals no intent by the Legislature with respect to the election of a Chairman.

The present language simply expresses an intent by the Legislature that the Commission have a Chairman. Looking to the legislative history of the organization of the Commission, it may fairly be concluded that each new member of the Commission should be permitted to vote on the selection of the Chairman who will preside over the Commission during the first year of the new member's term. In its election in March, 1978, the Commission elected a Chairman in conformity with this intent.

While the March, 1978, election appears valid, the question remains whether the Commission can elect a chairman more often than once each year. Seeing no prohibition by the Legislature for this proposition and recognizing that the function of the chairman of an administrative body is to serve as the focal point for the organization and smooth operation of such a body, it seems reasonable to conclude that the Commission be permitted to determine when it wishes to replace a Chairman, provided it conducts its election at least once a year. Research discloses no case law directly on point. However, the Massachusetts Supreme Court, in Massachusetts General Hospital v. Commissioner of Administration, 231 N.E.2d 543 (1967), does provide some guidance on similar language to that under discussion here. The issue in that case was whether language which required a Commissioner to annually certify rates for hospitals precluded him from such certification more often. The Court held the

language should be read as meaning "at least annually" since the Commissioner could reexamine the bases for such rates more often than once a year and since such an interpretation better served the purpose for such certification, i.e., fairer hospital rates. Adapting this rationale to our problem appears persuasive.



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