

# MAINE STATE LEGISLATURE

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JOSEPH E. BRENNAN  
ATTORNEY GENERAL



5 MAY 22 1978  
26 M.R.S.A. § 1401  
Richard S. Cohen  
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DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

May 25, 1978

Emilien A. Levesque, Commissioner  
Manpower Affairs  
20 Union Street  
Augusta, Maine 04333

Dear Emilien:

This letter responds to your oral request for an opinion of this office concerning the term of office for the Commissioner of Manpower Affairs. It is our understanding that the Governor has posted his nomination for a new Commissioner and that this nomination is presently going through the legislative confirmation process. This nomination has caused you to request an opinion on the term of office for the new appointee, if and when he is confirmed.

We realize that time is of the essence with regard to this question in light of the imminent confirmation proceedings, and we have attempted to respond as quickly as possible. On the basis of the relatively limited research we have been able to perform, it is our opinion that the term of office for the new Commissioner of Manpower Affairs would be governed by 5 M.R.S.A. § 2, and would be for a period of four years. That section reads, in pertinent part:

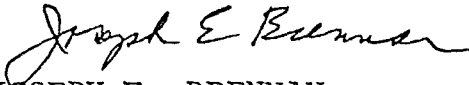
"All civil officers, appointed in accordance with law, whose tenure of office is not fixed by law or limited by the Constitution, otherwise than during the pleasure of the Governor, . . . shall hold their respective offices for 4 years and no longer, unless reappointed, and shall be subject to removal at any time within said term by the Governor for cause."

Our analysis of the question begins with examination of 26 M.R.S.A. § 1401. This section previously provided that the Commissioner would be appointed ". . . by the Governor with the advise and consent of the Council for a term coterminous with that of the Governor subject to removal for cause. . . ."

However, with the elimination of the Executive Council, this section was amended to provide only that the Commissioner if ". . . appointed by the Governor subject to review by the Joint Standing Committee on Labor and to confirmation by the Legislature . . . ." P.L. 1975, Chapter 771, section 289. Therefore, at the present time there is no specifically provided term of office for the Commissioner.\*

Article IX, section 6 of the Constitution of Maine provides "The tenure of all offices, which are not or shall not be otherwise provided for, shall be during the pleasure of the Governor." The term "otherwise provided for" was interpreted, prior to the 1975 amendment to the section, as meaning those cases where the Governor alone is vested with the appointing power, rather than with the advice and consent of the Council. Opinion of the Justices, 72 Me. 542, 547 (1881). However, within the same Opinion of the Justices which contained that construction, there is an indication that the phrase may also include statutory limitations upon terms of office. 72 Me. 558. The Justices found such limitation in P.L. 1824, Chapter 257, which is the forerunner of the present 5 M.R.S.A. § 2. The Justices noted with regard to the 1824 enactment that "The original enactment was passed for the purpose of establishing uniformity in the duration of official life." It is our opinion that 5 M.R.S.A. § 2 provides the same function today and, consequently, since the term of office for the Commissioner of Manpower Affairs is not stated in 26 M.R.S.A. § 1401, the term of that office is for 4 years.

Sincerely,

  
JOSEPH E. BRENNAN  
Attorney General

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\* This treatment of the Commissioner of Manpower Affairs is unique among "cabinet level" positions, i.e., department heads. Virtually every other position at this level specifically serves "at the pleasure of the Governor." The lack of such provision with regard to the Commissioner of Manpower Affairs may have been an oversight in legislative drafting of P.L. 1975, c. 771.