

MAINE STATE LEGISLATURE

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

July 19, 1978

Mr. Andrew Brown
Executive Department
State House
Augusta, Maine

Dear Mr. Brown:

This is in response to your request for an opinion as to whether the labor representative of the Maine Employment Security Commission, who is serving beyond his term awaiting the appointment and qualification of his successor, may continue to serve in that position upon implementation of the reorganization of the Employment Security Commission on July 6, 1978.

We answer in the affirmative.

P.L. 1978, c. 675, Sec. 3 repealed and replaced 26 M.R.S.A. § 1081 relating to the administrative organization of the Employment Security Commission. The new section 1081, which becomes effective on July 6, 1978, restructures the composition of the Employment Security Commission by removing the Commissioner of Manpower Affairs from the three member commission and replacing him with a public member. The restructured commission retains the labor and employer representatives as the other two members of the commission.

Any office created by the Legislature may be abolished by it by repeal of the act creating the office. Lewis v. U.S. 244 U.S. 134 (1917). However, it is well established that where the legislature repeals and re-enacts a statute with amendments, those provisions of the original statute which, included in the new one, have continuous operation from their original enactment. Annot. 77 ALR 2d 336; Bear Lake Irrigation Co. v. Garland 164 U.S. 1 (1896); Kuhne v. United States 250 F. Supp. 523 (N.D. Iowa 1965). In

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Hiddleson v. City of Grand Island 212 N.W. 619 (Neb. 1927), the Court stated that "where by amendment and repeal, the words of a former statute or section of a statute are changed in some respects, but it is intended that the statute shall continue to operate, it is not strictly a repeal, but a continuation of the former law as amended."

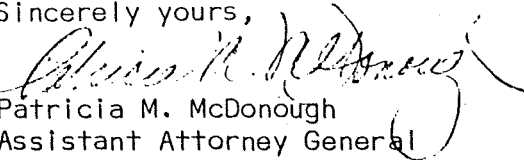
The new Section 1081 of Title 26 continues to provide for a three member commission. The new commission retains the positions of the representative of labor and the representative of employers. The significant change in the commission composition is the replacement of the Commissioner of Manpower Affairs as the third member with a representative of the general public. As the Legislature retained the labor and employer representatives on the commission in the reorganization, it is clear that the Legislature intended to continue the operations of the Commission with these positions.

As the position of labor representative is continued in the new Section 1081, the labor representative may, therefore, remain in office. Title 5 MRSA § 3 provides, in part:

All civil officers ... shall hold office during the term for which they were appointed and until their successors in office have been appointed and qualified, unless sooner removed in accordance with law.

Pursuant to this provision, the labor representative may continue in office until his successor is appointed and qualified.

Sincerely yours,


Patricia M. McDonough
Assistant Attorney General

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