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July 31, 1978

William J. Francis, Chairman
Maine State Board of Social Worker Registration
P.O. Box 612
Bath, Maine 04530

Re: Reappointment of the Social Worker Board.

Dear Mr. Francis:

This is in response to your oral request for an opinion as to the effect of the enactment of Chapter 673 of the Public Laws of 1977 on the composition of the State Board of Social Worker Registration. While the question is not free from doubt, we recommend the appointment of a new 8-member State Board of Social Worker Registration, consistent with the criteria of P.L. 1977, c. 673.

Pursuant to the provisions of Title 32 M.R.S.A. §§ 4186 and 4187, an eight-member Board of Social Worker Registration was created with the following membership:

"Members of the Board shall be residents of this State and of good moral character. Six members shall have been engaged in the active practice of social work as registered or associate social workers for not less than five years prior to appointment. One member shall be a representative of the public. No members of the Board shall serve more than two terms as a Board member. The Governor may remove any member for cause," 32 M.R.S.A. § 4187.

It is my understanding that, consistent with this law, there are currently four registered social workers and two associate social workers on the Board.

Chapter 673 of the Public Laws of 1977 repealed and replaced the above provisions concerning the State Board of Social Worker Registration and provided, in pertinent part, as follows:

"There is created a State Board of Social Worker Registration within the Department of Business Regulation which shall administer this chapter. The Board shall consist of eight members who shall be appointed by the Governor. The term of office shall be for three years. All members shall hold office until their successors are appointed and qualified. Any vacancies occurring on the Board shall be filled on a basis to assure that within three years of the effective date of this chapter, the Board shall be composed as follows: four certified social workers, two registered social workers, one associate social worker, and one consumer. All subsequent appointments shall be made in a manner which will ensure that the Board's composition remains consistent with that set out in this section. Prior to the filling of any vacancies, the Governor shall solicit recommendations of candidates from the Maine Chapter of the National Association of Social Workers and other social welfare organizations as he deems appropriate."
(emphasis supplied)


In addition, as to qualifications, the new legislation provides that:

"Members of the Board shall be residents of this state, of good moral character, and, except for the consumer member, shall have been engaged in the active practice of social work as certified, registered, or associate social workers for not less than five years prior to appointment. Appointees to the initial board, after the effective date of this chapter, shall have been engaged in the active practice of social work for not less than five years prior to appointment and shall be qualified for certification as certified, registered or associate social workers. No member of the Board shall serve more than two terms as a Board member. The Governor may remove any member for cause." (emphasis supplied), 32 M.R.S.A. § 7027.

Although the sections are not identical, the provisions of 32 M.R.S.A. §§ 7026 and 7027 are in many ways similar to the analogous sections of Title 32 M.R.S.A. §§ 4186 and 4187. In order to ascertain whether

it is necessary for the Governor to appoint a new State Board of Social Worker Registration, it is necessary to determine the legislative intent. In this regard, it should perhaps be noted that certain words in the legislation enacted as Public Laws of 1977, Chapter 673, tend to indicate that the Legislature intended a new board. Title 32 M.R.S.A. § 7027, for example, speaks to appointees to the "initial board." Similarly, § 7026 speaks to the "creation" of a State Board of Social Worker Registration within the Department of Business Regulation. On the other hand, the statutory language concerning appointments to the Board in the first years after the effective date of the new statute tends to indicate that the Legislature envisioned a gradual replacement policy. The legislative record concerning the enactment of this statute does not provide any specific guidance (See Legislative Record at 441-43, March 3, 1978).

There is legal authority for the proposition that where the repeal and replacement of a statute continues to provide for the operation of the prior law, it is not strictly a repeal, but a continuation of the former law as amended (See, e.g., Opinion of this office dated July 19, 1978, and the cases cited therein). Nevertheless, because there was no explicit transition provision in the repealing legislation, and because, as the preceding analysis indicates, there is no other definitive statement of legislative intent, we recommend the appointment of a new Board in order to preclude continuing and/or future doubt as to the Board's validity. In this regard, however, in view of the provisions of Title 5 M.R.S.A. § 3, the validity of those actions by the present Board taken between the effective date of P.L. 1977, c. 673 and the qualification of the successor board, would not be in question.



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SR/ec

cc: Andy Brown
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