

MAINE STATE LEGISLATURE

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December 11, 1978

Inge L. Foster, Chairman
State Board of Education
Dresden, Maine 04342

Re: Commissioner of Educational & Cultural Services

Dear Mrs. Foster:

You have inquired as to whether a vacancy will exist in the position of the Commissioner of Educational and Cultural Services at the end of the present Governor's term of office. It is our opinion that the Commissioner of Educational and Cultural Services' term of office is coterminous with that of the Governor's and that upon the expiration of the Governor's term of office the Commissioner's term of office also expires.

Pursuant to 20 M.R.S.A. § 1-A the Commissioner of Educational and Cultural Services "shall be appointed by the Governor from a list of three candidates prepared by the State Board of Education as established and subject to review by the Joint Standing Committee in Education and to confirmation by the Legislature to serve at the pleasure of the Governor." Civil officers, other than judicial officers, who are appointed in accordance with law and whose terms of office are fixed by law, normally hold their office during the term for which they are appointed and until their successors in office have been appointed and qualified. 5 M.R.S.A. § 3. However, pursuant to 5 M.R.S.A. § 2 those civil officers whose tenure of office is not fixed by law or limited by the Constitution other than to serve during the pleasure of the Governor "shall hold their respective offices for four years and no longer, unless reappointed." Since the Commissioner of Educational and Cultural Services serves at the pleasure of the Governor and not for a fixed term of office, it is our opinion that 5 M.R.S.A. § 2 is the controlling statute rather than 5 M.R.S.A. § 3. Therefore, the Commissioner's term will end with the Governor's and it would terminate at the expiration of the Governor's term of office.

Although the Commissioner's term is coterminous with the Governor's and would terminate at the expiration of the Governor's term of office, the new Governor could appoint the Commissioner as a temporary Deputy Commissioner to exercise the powers and perform the duties of the Commissioner until a Commissioner is duly appointed. 5 M.R.S.A. § 1. Such an appointment has been limited to a maximum period of six months by Public Laws of 1975, Chapter 771, Section 23.

Chapter 771 was "An Act Redistributing the Powers of the Executive Council." There was considerable legislative debate surrounding the enactment of Chapter 771, in particular dealing with the expanded power of the Governor to appoint and to remove department heads. Amendments which would require the Governor to appoint his Commissioners within a set period of time were considered but were defeated. During debate, Representative Kelleher expressed his concern about the need for job security and the fact that former Commissioners could be kept in a state of limbo by the new Governor while he delayed the appointment process. Representative Cooney responded by pointing out the need for harmony between the Governor and his Commissioners and the need for him to be able to dismiss them at his own discretion.* He added that,

"the (State Government) Committee has provided that all appointees serve coterminous, but a Governor may appoint, for a six-month provisional period someone, to act as Acting Commissioner. This would mean that if he was unable to find someone to serve in a position quickly, he could appoint a deputy commissioner or some person from the classified service to act as acting commissioner for a period not to exceed six months. So there is a provision in the Committee bill for interim appointments." (L.R. 841, House, March 31, 1976)

The State Government Committee bill was L.D. 2197. Section 23 of Chapter 771 is exactly the same wording as originally appeared in § 23 of L.D. 2197. Therefore, the Legislature has provided for the orderly transfer of governmental functions from one administration to the next by allowing the Governor to appoint a temporary Deputy Commissioner for a period of up to six months while the search for a permanent Commissioner proceeds.

* On April 5, 1976, Senator Curtis stated that "It was the determination of the (State Government) Committee in its final report that there should be no restrictions upon the Governor" should he decide to dismiss one of his department heads. (L.R. 968).

In conclusion, it is our opinion that 5 M.R.S.A. § 2 applies to the Commissioner's position rather than § 3 and that the new Governor has the authority under 5 M.R.S.A. § 1 to appoint a temporary Deputy Commissioner to be the Acting Commissioner until such time as a Commissioner has been duly nominated and confirmed. At this point, we decline to answer the second question raised in your request of October 31, 1978.

Sincerely,



DONALD G. ALEXANDER
Deputy Attorney General

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