

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

January 24, 1979

Honorable Walter W. Hichens
Maine State Senate
Augusta, Maine 04333

Re: Removal of Town Managers - Interpretation
of 30 M.R.S.A. §2313 (1978)

Dear Senator Hichens:

Your request for an interpretation of 30 M.R.S.A. §2313 (1978), regarding the removal of town managers from office, has been referred to me for response. In particular, you have inquired under what circumstances a town may remove a town manager whose term of office is not specified in an employment contract.

By Chapter 438, §1 of the Public Laws of 1969, legislation was enacted permitting municipalities to adopt the "town manager plan" of government. See 30 M.R.S.A. §§2311-2320(1978).¹ A municipality which adopts the "town manager plan" shall have "a town meeting, an elected board of selectmen, an elected school committee, an appointed town manager and such other officials and employees as may be duly appointed" 30 M.R.S.A. §2311(2) (1978). The town manager shall be appointed by the board of selectmen and such appointment must be based "solely on...his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, the duties of office as set forth." 30 M.R.S.A. §2312 (1978).

1. Repealing 30 M.R.S.A. §§2301-2303.

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The term during which the town manager shall hold office and the procedure for his removal are set forth in 30M.R.S.A. §2313(1) and (3)(1978), which provide:

"1. The town manager shall hold office for an indefinite term unless otherwise specified by contract.

3. The town manager may be removed or suspended for cause by the board of selectmen in accordance with the following procedure:

A. The selectmen shall file with the town clerk a written preliminary resolution setting forth the specific reasons for the proposed removal, a copy of which shall be delivered to the manager within 10 days of filing.

B. The manager may within 20 days of receiving the resolution reply in writing and may request a public hearing.

C. Upon request for a public hearing, the selectmen shall hold one not earlier than 10 days after the request is filed and not later than 30 days.

D. After the public hearing or at the expiration of the time permitted the manager to request the public hearing, if no such request is made, the selectmen may adopt or reject the resolution of removal.

E. The selectmen may suspend the manager from duty in the preliminary resolution, but in no event shall the manager's salary be affected until the final resolution of removal has been adopted."

In view of the foregoing, it is apparent that a municipality is free to limit a town manager's term of office by express provision in an employment contract. Where governed by contract, the town manager's term of office would expire at the time specified, unless otherwise renewed by the board of selectmen. If a municipality wished to remove its manager prior to the termination date specified in the contract it would have to do so in accordance with the provisions of 30 M.R.S.A. §2313(3).

In the event that there is no contractual limitation on the manager's term of office and therefore he holds office for an indefinite term, the question arises as to how a municipality can remove him from office. The answer to this question obviously turns on an interpretation of the phrase "indefinite term." Although the phrase is ambiguous,² I have concluded, after reviewing the relevant legislative history of 30 M.R.S.A. §2313(1978), that in the context in which it is used, the phrase "indefinite term" means that a town manager can only be removed for "cause" in accordance with the procedure set forth in subsection 3 of section 2313.³

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2. For example, in the context of employment contracts, the general rule appears to be that where there is no definite time set for employment, the relationship between the parties is "terminable at will." See, e.g., Maple Island Farm v. Bitterling, 209 F.2d 867 (8th Cir. 1954), cert. denied, 348 U.S. 882; Martin v. New York Life Ins. Co., 42 N.E. 416, 148 N.Y. 117 (1895); Zimco Restaurants Inc. v. Bartenders & Culinary Workers Union, 165 Cal.App.2d 235, P.2d 789 (1958); Morsinkhoff v. Deluxe Laundry and Dry Cleaning Co., 344 S.W.2d 639 (Mo. App. 1961). See generally I Corbin On Contracts §96 (1963). The Maine Supreme Judicial Court has addressed this issue in situations involving contracts for the sale of goods and has held that where the parties have not specified the duration of the contract, it is terminable at will. See Cumberland Bone Co. v. Atwood Lead Co., 63 Me. 167, 170 (1874); Durgin v. Baker, 32 Me. 273, 274 (1850). See also 11 M.R.S.A. §2-309(2) (Uniform Commercial Code).

These judicial precedents, however, do not provide much guidance in an interpretation of 30 M.R.S.A. §2313(1978) since the Legislature had a specific purpose in mind when it used the phrase "indefinite term."

3. It is my understanding that the Maine Municipal Association has arrived at a similar interpretation, and consequently, recommends that municipalities use employment contracts containing a termination date when appointing town managers.

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As originally proposed in L.D. 1161, 30 M.R.S.A. §2313(1) simply provided that "[t]he town manager shall hold office for an indefinite term." The proposed legislation also contained the removal provisions found in subsection 3 of section 2313. Thus, all town managers were to hold office for an indefinite term and were subject to the removal provisions of section 2313(3). Obviously, the phrase "indefinite term" was intended to mean more than "terminable at will" since otherwise there would have been no need to provide for a removal procedure.⁴ Eventually, L.D. 1161 was amended by H-458 to add the words "unless otherwise specified by contract" to section 2313(1). It seems apparent, therefore, that the Legislature contemplated that, as a general rule, town managers would serve for an indefinite term subject to removal for cause. The Legislature also recognized that a municipality should be free to regulate the tenure of its Town Manager by contract.

I hope this information is helpful to you and please feel free to contact me again if I can be of further assistance.

Sincerely,

WILLIAM R. STOKES
Assistant Attorney General

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4. It is a well-established rule of statutory construction that the Legislature is presumed not to intend absurd results. See State v. Larrabee, 156 Me. 115, 161 A.2d 855 (1960).