

MAINE STATE LEGISLATURE

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September 27, 1979

Honorable Joseph E. Brennan
Governor of Maine
State House
Augusta, Maine 04333

Dear Governor Brennan:

In two separate opinion requests you have inquired whether the last paragraph of art. V, pt. 1, § 8 of the Maine Constitution applies to certain appointments made by the Governor, specifically, to the appointment of the Director of Lotteries under 8 M.R.S.A. § 352 and to temporary appointments made under 5 M.R.S.A. § 1.

The last paragraph of art. V, pt. 1, § 8 provides as follows:

Every nomination made by the Governor shall be made seven days at least prior to appointment of the nominee.

As we read it, this paragraph could be interpreted to apply only to appointments made under § 8, to all gubernatorial appointments where the Governor is required to nominate as part of the appointment procedure, or to all gubernatorial appointments. In our opinion, the paragraph applies to all gubernatorial appointments where the Governor must nominate as part of the appointment process.

Our research leads us to conclude that the Governor is not required to nominate in every instance where he may or must make an appointment. In other words, a provision for an appointment does not carry with it an implicit requirement of a nomination. Given this conclusion and since by its wording the last paragraph would appear on its face to attach the seven-day requirement to nominations, we reject the interpretation that the paragraph applies to all gubernatorial appointments.

It is clear that the seven-day requirement attaches to all § 8 appointments, insofar as the procedures set forth in that provision^{1/} expressly mandate that the Governor nominate the prospective officeholder. According to its terms, appointments to which § 8 applies are those of judicial officers except judges of probate and justices of the peace, civil and military officers not appointed under other constitutional provisions and civil and military officers whose appointment "shall not by law be otherwise provided for." We interpret the latter exception to mean appointments the making of which requires some procedure other than nomination and confirmation in accordance with § 8.^{2/}

The remaining question is whether the seven-day requirement is limited to § 8 appointments or applies to any gubernatorial appointments which must be preceded by a nomination. Based upon language changes made when the section was repealed and replaced in 1975, we believe the latter interpretation to be correct. The comparable language in former § 8 referred to "such nominations" and "such appointments." The "such" in each usage clearly referred to nominations and appointments made pursuant to the section. In the present version of the § 8, "such" is eliminated in both instances and the term "(e)very" modifies "nomination." Those language changes do not appear to be inadvertent and strongly indicate an intent to broaden the applicability of the paragraph. Thus, we interpret "(e)very nomination made by the Governor" to include appointments made under § 8 and therefore subject to the

^{1/} Section 8 is enlarged upon by 3 M.R.S.A. § 151, et seq., enacted by P.L. 1975, c. 771, § 11 to "carry out the purpose of" § 8, see Statement of Fact, L.D. 2197, 107th Legislature, as provided in ¶¶ 3 and 4 of § 8.

The first paragraph of § 151 provides:

The nomination and confirmation of all judicial officers whose confirmation by the Legislature is required by the Constitution and of all other civil and military officers whose confirmation by the Legislature is required by law shall be according to the procedure provided in this section.

^{2/} Those statutes which authorize or direct the Governor to "appoint, subject to the confirmation of" the Legislature or a legislative committee do not appear to be among those which are "by law. . . otherwise provided for," but rather to be among those to which § 8 was intended to apply. Section 8 provides constitutional requisites for gubernatorial appointments requiring legislative confirmation and its application would thus appear to be triggered by a provision calling, without more, for gubernatorial appointment and legislative confirmation.

nomination requirement therein and to include all gubernatorial appointments where the Governor must nominate as part of the appointment procedure.

Applying these principles to the appointments about which you have inquired, we conclude that the last paragraph of § 8 does not apply in either case.

Title 8 M.R.S.A. § 352 provides:

"The State Lotteries shall be under the immediate supervision and direction of a director, who shall be a person qualified by training and experience to direct the State Lotteries. The director shall be appointed by the Governor and shall serve during the pleasure of the Governor. Any vacancy occurring in the office of the director shall be filled in the same manner as the original appointment.

"The director shall devote his entire time and attention to the duties of his office."

Title 5 M.R.S.A. § 1 provides:

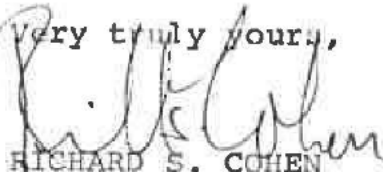
"In order to provide for the uninterrupted and orderly functioning of any agency, board, commission or department of the State Government during a vacancy in the office of the appointive or elective head thereof and whenever there is no state official, deputy, assistant or other state employee duly authorized by law to exercise the powers and perform the duties of such appointive or elective head during such vacancy, the Governor is empowered to appoint a temporary deputy commissioner to exercise the powers and perform the duties of the appointive or elective head of such office during such vacancy. The term of office of such temporary deputy commissioner so appointed shall be at the pleasure of the Governor and shall not extend beyond the date of qualification of a successor to the office of appointive or elective head of such agency, board, commission or department or 60 days from the date of his appointment, whichever shall first occur. The term of office of

such temporary deputy commissioner so appointed to an office to which appointments are by law subject to confirmation by the Legislature shall be at the pleasure of the Governor and shall not extend beyond the date of qualification of a successor appointed to such office or 6 months from the date of appointment, whichever shall first occur. Such temporary deputy commissioner shall not be eligible for reappointment. Such temporary deputy commissioner shall be appointed from the personnel of the agency, board, commission or department in which such vacancy occurs."
(emphasis supplied)

Each of these appointments falls within the "by law otherwise provided for" exception to § 8, in that each provides for gubernatorial appointment by a procedure other than that required by § 8. Neither requires legislative confirmation and there is no other indication that the requirements of § 8 are to apply. Thus, the constitutional nomination requirement is not applicable. Similarly, neither section provides for nomination. Therefore, since appointments made under 8 M.R.S.A. § 352 and 5 M.R.S.A. § 1 are not appointments to which art. V, pt. 1, § 8 applies and are not appointments where the Governor must nominate as a part of another appointment procedure, we conclude that the last paragraph of § 8 does not apply.

If we can be of further assistance, please let us know.

Very truly yours,


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Attorney General

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