

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
January 31, 1980

80-18

Stewart N. Smith, Commissioner
Department of Agriculture
State House
Augusta, Maine 04333

Re: Appointment of James J. Roche to Maine Milk Commission

Dear Mr. Smith:

This memorandum responds to your request for an opinion as to proper term of James J. Roche on the Maine Milk Commission (the "Commission"). For the reasons explained below, we have concluded that the term of Mr. Roche, who was appointed to fill a vacancy in a four-year term commencing October 1, 1975, expired on September 30, 1979, rather than on September 22, 1980, as recorded in the files of the Secretary of State. Accordingly, Mr. Roche is presently serving legally as a "holdover" and is entitled to remain in office until his successor is appointed and qualified.

REASONING

Section 2952 of the Maine Milk Commission Law, 7 M.R.S.A. §2951, et. seq. (the "Act") makes the following provisions for appointments to the Commission and the terms of office of its members:

The 4 members, other than the Commissioner of Agriculture, shall be appointed by the Governor and shall serve for a term of 4 years and until their successors have been duly appointed and qualified, except that in the first instance, the initial terms shall be for one, 2, 3 and 4 years so that the terms of the members of the commission shall be staggered. *** Any vacancy in the membership of said commission shall be filled by appointment by the Governor.

No provision is made in the Act for the term of a member who is appointed to fill a vacancy.

The statutory composition of the Commission was substantially changed in 1975, pursuant to P.L. 1975, ch. 517, sec. 1, when the Act was amended to change both the qualification requirements and the terms of members of the Commission. The 1975 amendment was effective October 1, 1975 and as of that date four members of the Commission were duly appointed to serve 1, 2, 3 and 4 year terms as contemplated by Section 2952. Shirley Hamel was one of these initial appointees, given an initial four year term commencing October 1, 1975 and expiring September 30, 1979. According to the records of the Secretary of State's office, Mr. Hamel resigned on June 11, 1976 and was replaced by James J. Roche, who was appointed to a full four-year term commencing September 22, 1976 and expiring September 22, 1980.

The issue raised is whether Mr. Roche should have been appointed only to serve out the term of his predecessor, which ended September 30, 1979, rather than for a new four year term.


This office has examined this very issue, at considerable length, in relation to the Maine Labor Relations Board. See Op. Atty. Gen., April 27, 1979. In that case, as here, a board was created with staggered terms for its members with no specific provision being made for the length of the term of a member appointed to fill an unexpired term of a resigning member. In the case of the Maine Labor Relations Board, we concluded that when a vacancy occurs through resignation, the integrity of the staggered board could only be maintained by appointing a successor to the unexpired term of office of his predecessor, as opposed to an independent term. Also see, Op. Atty. Gen., September 7, 1977.

That conclusion applies with equal force to the Maine Milk Commission Act. Indeed the Milk Commission statute points even more directly to this result because it requires initial 1, 2, 3 and 4 year terms "so that the terms of the members of the commission shall be staggered." Section 2952. If Mr. Roche, or any other member of the Commission, were allowed to fill an unexpired term with a new independent term, the staggered nature of board membership would be destroyed.

Accordingly, Mr. Roche should have been appointed only to the unexpired term of Mr. Hamel when he resigned, which expired on September 30, 1979. Because Mr. Roche has not been reappointed or replaced, he is presently serving legally as a "holdover" from the previous term and is entitled to continue to serve as such until his successor is appointed and qualified. Section 2952 of the Act, 5 M.R.S.A. §3; Op. Atty. Gen., April 27, 1979.

If I can be of further assistance in this matter, please let me know.

Sincerely,



RUFUS E. BROWN
Assistant Attorney General

REB:jg

cc: James J. Roche