

# MAINE STATE LEGISLATURE

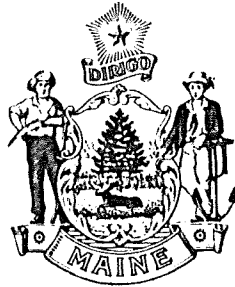
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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

February 13, 1980

Honorable Norman W. Nelson  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Nelson:

You have requested our interpretation of the requirement in 30 M.R.S.A. § 103 which provides that when a mid-term vacancy occurs in the office of County Commissioner the Governor must appoint a replacement who is enrolled in the same political party as the preceding Commissioner. The relevant language in § 103 reads as follows:

"In the case of a vacancy in the term of a commissioner who was nominated by primary election before the general election, the commissioner appointed by the Governor shall be enrolled in the same political party as the commissioner whose term was vacant."<sup>1/</sup>

Your question is whether the "same political party" requirement was intended to apply only when a vacancy occurs between the primary and general elections. We do not believe this to be the case. Rather, we construe the requirement as applicable whenever the preceding commissioner had been nominated by primary election.

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<sup>1/</sup> The identical language appears in 30 M.R.S.A. § 101. Thus, the conclusions expressed in this opinion apply with equal force to that section.

The question you pose was addressed in a prior Opinion of the Attorney General dealing with the constitutionality of § 103. In discussing that issue, our prior opinion implicitly interpreted the language, "who was nominated by primary election before the general election," to refer to the manner in which the prior commissioner was selected and not to the time period during which the office became vacant. Thus, with reference to 30 M.R.S.A. § 101,<sup>2/</sup> we explained the relevant language as follows:

"Title 30 M.R.S.A. § 101 applies only to those cases where the preceding commissioner was nominated by primary election. See 21 M.R.S.A. § 441, et seq. It would not apply to the situation where nomination was by nomination petition, i.e., a person who was running for office without political party designation. See 21 M.R.S.A. § 491, et seq."

The above interpretation is consistent not only with a literal reading of the statute, but also with the apparent legislative intent underlying the enactment of the "same political party" requirement in § 103. As we stated in our prior opinion,

". . . it is reasonable to assume. . . that the intent of the Legislature was to attempt to insure that the interim replacement for a county commissioner who was elected as a party candidate would share the same basic political philosophy as the person whom he replaces."

Given the legislative purpose, we can see no reason why the "same political party" requirement should be limited to vacancies occurring between the primary and general elections.<sup>3/</sup> Accordingly, it is our opinion that the requirement applies whenever the preceding commissioner was nominated by primary election, regardless of when the position became vacant.

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<sup>2/</sup> As noted above, the same sentence appears in § 101 as is found in § 103.

<sup>3/</sup> Our conclusion might be different if the Governor were replacing a candidate who died, withdrew or became disqualified between the primary and general elections. That, however, is not the purpose of 30 M.R.S.A. § 103. The replacement of a candidate is governed by an entirely different procedure. See 21 M.R.S.A. § 1474.

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I am enclosing a copy of our prior opinion on 30 M.R.S.A. § 103. Please feel free to contact us if we can be of any further service.

Sincerely,

*Stephen L. Diamond*

STEPHEN L. DIAMOND  
Deputy Attorney General

SLD/ec  
cc: S. Kirk Studstrup