

# MAINE STATE LEGISLATURE

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RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

May 13, 1980

Honorable James P. Elias  
R.F.D. #1  
P.O. Box 44 B  
Norridgewock, Maine 04957

Dear Representative Elias:

This will respond to your written opinion request of April 17, 1980 in which you asked the following questions:

1. For what length of term would an individual serve if he were appointed by the town selectmen to fill a vacancy left by the resignation of an incumbent road commissioner?
2. May a board of town selectmen refuse to call a special town meeting for the purpose of electing a new road commissioner to fill a vacancy created by the incumbent's resignation from office, notwithstanding the fact that the selectmen have been presented with a valid petition for such a special town meeting pursuant to 30 M.R.S.A. §2053 (1978)?

In order to place your inquires in proper perspective, it is necessary to describe the factual situation which prompted them.

Factual Background

At the annual town meeting held in March, 1980, the voters of the Town of Madison met to elect various town officers, including a road commissioner. As described in your letter of April 17, 1980, the following "unusual sequence of events" occurred.

"We had a number of candidates running for road commissioner. One of these candidates in conjunction with the town fathers openly claimed that if he were elected he would step down and let the

selectmen and town manager appoint his successor. Even though the people understood what was to take place, this candidate was in fact elected. He kept his word and stepped down."

You have also informed us that following the road commissioner's resignation, the town selectmen appointed the town manager as interim road commissioner until someone is appointed to fill the vacancy created by the incumbent's resignation. Subsequent to your opinion request, you orally advised us that the selectmen have, in fact, appointed an individual to fill the road commissioner's vacancy. In the meantime, however, a group of Madison citizens have filed a petition requesting the selectmen to call a special town meeting for the purpose of electing a new road commissioner.<sup>1</sup> You have informed us that the selectmen have refused to call such a special town meeting. Finally, it is our understanding that the incumbent road commissioner was elected for a one year term of office.

-I-

Your first question concerns the term of office of the individual appointed by the town selectmen as road commissioner to fill a vacancy caused by the incumbent's resignation. The first paragraph of 30 M.R.S.A. §2253 (1978) provides that a vacancy in a municipal office may result from "[n]onacceptance, resignation, death, removal, permanent disability or incompetency, failure to qualify for the office within 10 days after written demand by the municipal officers or failure of the municipality to elect a person to office." With respect to the filling of vacancies in municipal offices, subsections (1) and (2) of section 2253 are instructive. They provide:

"1. When there is a vacancy in a town office other than that of selectman, assessor or school committee, the selectmen may appoint a qualified person to fill the vacancy.

2. When there is a vacancy in the office of selectman or assessor, the selectmen may call a town meeting to elect a qualified person to fill the vacancy."

It is apparent that 30 M.R.S.A. §2253(1)(1978) authorizes the selectmen of a town to appoint a person "to fill the vacancy" created by an incumbent road commissioner's resignation from office. It is a general rule of statutory construction that, unless otherwise specified, a person appointed to fill a vacancy holds office for the remainder of the incumbent's unexpired term. See Googins v. Gilpatrick, 131 Me. 23,

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1. You have advised us, and we assume for the purposes of this opinion, that the petition referred to above complied with the requirements of 30 M.R.S.A. §2053 (1978).

27, 158 A. 699 (1932). See generally E. McQuillin, 3 Municipal Corporations §12-109 at 470 (3rd ed., 1973); Public Officers and Employees, 63 Am. Jur. 2d §155 at 723-24 (1972). Cf. 21 M.R.S.A. §1441(1)(1965). Consequently, it is our conclusion that the person appointed by the selectmen of the Town of Madison to fill the vacancy created by the road commissioner's resignation, holds office for the remainder of the incumbent's unexpired term. Since the incumbent road commissioner was elected for a one year term of office, the person appointed to fill the vacancy serves until the next annual town meeting in March, 1981.

-II-

Having concluded that the person appointed to fill the vacancy created by the road commissioner's resignation from office serves for the remainder of the incumbent's unexpired term, we now turn to your second inquiry, which is whether the selectmen are required, pursuant to 30 M.R.S.A. §2053 (1978), to call a special town meeting to elect a new road commissioner.

30 M.R.S.A. §2053 (1978) provides:

"On the written petition of a number of votes equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall either insert a particular article in the next warrant issued or shall within 60 days call a special town meeting for its consideration."

A reading of the language of section 2053 certainly suggests that the selectmen of a town are required to call a special town meeting if they do not place the particular article in the next warrant. However, section 2053 must be read in conjunction with 30 M.R.S.A. §2051(4) (1978) which provides:

"If the selectmen unreasonably refuse to call a town meeting, it may be called by a justice of the peace in the county on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the gubernatorial election, but in no case less than 10."

It is clear that subsection (4) of section 2051 authorizes a justice of the peace to call a town meeting provided the selectmen have unreasonably refused to call one. See Allen v. Hackett, 123 Me. 106, 114, 121 A.906 (1923); Jones v. Inhabitants of Sanford, 66 Me. 585, 690 (1877); Southard v. Inhabitants of Bradford, 53 Me. 389, 391 (1866). What is somewhat less clear, however, is whether section 2051(4) confers upon the selectmen the right to reasonably refuse to call a special town meeting requested by the required number of voters pursuant to the petition procedure established by section 2053. The language of section 2051(4) certainly implies that the

selectmen have such authority. On the other hand, one could argue that the "unreasonable refusal" provision of section 2051(4) is simply a pre-condition to the authority of a justice of the peace to call a special town meeting but does not qualify the selectmen's duty to call such a meeting pursuant to section 2053.

In determining the scope of section 2051(4) we must be guided by what the Legislature intended when it enacted that statute. See, e.g., Town of South Berwick v. White, Me., A.2d, slip op. at 2-3 (Opinion filed April 4, 1980); Town of Arundel v. Swain, Me., 374 A.2d 317, 319 (1977). As part of the process of statutory construction, the courts will endeavor to interpret legislative enactments so as to effectuate the purposes which the Legislature sought to accomplish. See, e.g., Natale v. Kennebunkport Board of Zoning Appeals, Me., 363 A.2d 1372 (1976); In Re Belgrade Shores, Me., 359 A.2d 59 (1976). Moreover, no language of a statute should be treated as surplusage and the law will be construed in order to avoid rendering its language meaningless. See, e.g., State v. Tullo, Me., 366 A.2d 843 (1976); Waddell v. Briggs, Me., 381 A.2d 1132 (1978); Goodwin v. Luck, 135 Me. 288, 194 A. 305 (1937).

30 M.R.S.A. §2053 (1978) authorizes a certain percentage of the voters of a town to petition the municipal officers for the purpose of calling a special town meeting. More than a century ago, the Maine Law Court stated that "the whole theory of a New England town meeting, has been, that upon all necessary occasions, the inhabitants upon short notice, could come together. Upon this idea is based the provision that where the selectmen unreasonably refuse to call a town meeting, a justice of the peace may call one upon the application of any ten or more voters." Jones v. Inhabitants of Sanford, 66 Me. at 590 (1877). The "unreasonable refusal" provision of 30 M.R.S.A. §2051(4) (1978) is an explicit statutory limitation on the authority of a justice of the peace to call a town meeting. In other words, where the selectmen of a town have acted reasonably in declining to call a meeting, a justice of the peace is without authority to call one. See Googins v. Gilpatrick, 131 Me. at 27, 158 A.699 (1932). Any meeting called by a justice of the peace without a prior unreasonable refusal by the town selectmen is illegal. See Allen v. Hackett, 123 Me. at 114, 121 A.906. (1923); Southard v. Inhabitants of Bradford, 53 Me. at 390-91 (1866). We believe that section 2051(4) reflects the Legislature's recognition of the need to grant the selectmen of a town a measure of discretion in refusing to comply with unreasonable requests for a special town meeting. In our view, the purpose of sections 2053 and 2051(4) is to permit the voters of a town to request a special town meeting subject to the authority of the selectmen to refuse to call such a meeting if the request is unreasonable.

To conclude otherwise would render the "unreasonable refusal" language of section 2051(4) meaningless. If the town selectmen are mandated to call a meeting whenever requested by the required number of voters pursuant to section



2053, the reasonableness or unreasonableness of their refusal to do so is immaterial. In other words, any refusal by the selectmen to call a meeting pursuant to section 2053, be it reasonable or otherwise, would be unjustified. In accordance with 30 M.R.S.A. §2051(4), a justice of the peace may call a town meeting, if the selectmen have "unreasonably refuse[d]" to call one, "on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10." The petition procedure before a justice of the peace for the calling of a special town meeting is identical to that prescribed by 30 M.R.S.A. §2053. It seems anomalous to us that the selectmen have absolutely no right to refuse to call a meeting when requested by a group of voters pursuant to section 2053, but that the same group of voters have no right to petition a justice of the peace to call a meeting pursuant to section 2051(4) unless it appears that the selectmen have "unreasonably refuse[d]" to call one. If all refusals by the selectmen to call a town meeting are unjustified and therefore unreasonable, the "unreasonable refusal" provision of section 2051(4) is superfluous. We do not believe the Legislature intended such a result, particularly in view of the fact that the "unreasonable refusal" provision has been part of Maine law for almost 160 years. See P.L. 1821, c.114, §5.

Finally, we believe our conclusion is supported by the Law Court's decision in Googins v. Gilpatrick, 131 Me. 23, 158 A.699 (1932), the facts of which are remarkably similar to those recited in your opinion request. In Googins, the treasurer of Old Orchard Beach resigned shortly after being elected. The town selectmen, in accordance with the statutory provisions for the filling of vacancies, appointed the defendant as town treasurer. A group of voters petitioned for a special town meeting for the election of a new treasurer but the selectmen refused the request. Thereafter, a justice of the peace called a special town meeting at which the plaintiff was elected treasurer. The Law Court concluded that the person appointed to fill the treasurer's vacancy held office for the remainder of the incumbent's unexpired term. Consequently, the Court held

"...that there was no 'vacancy' when the petition to call a special town meeting was presented to the selectmen of the town of Old Orchard Beach; that they did not 'unreasonably refuse',...Reason would not justify the expenditure required to summon the inhabitants to vote when their action would effect nothing."


Googins v. Gilpatrick, 123 Me. at 27.

Having concluded that a board of town selectmen has the authority to reasonably refuse to call a special town meeting when requested under 30 M.R.S.A. §2053(1978), it is now possible to apply that conclusion to your specific question concerning the refusal of the selectmen of the Town of Madison to call a town meeting for the election of a new road commissioner. Since

the person appointed as road commissioner by the selectmen holds office for the remainder of the incumbent's unexpired term, a meeting to elect a new road commissioner could accomplish no legal purpose. Consequently, the refusal of the selectmen to call such a meeting is not unreasonable. See Googins v. Gilpatrick, supra.

I hope this information is helpful. Please feel free to call upon me if I can be of further assistance.

Sincerely,



RICHARD S. COHEN  
Attorney General

RSC:sm