

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 20, 1980

S. Kirk Studstrup
Administrative Assistant
Office of the Governor
State House
Augusta, Maine 04333

Dear Mr. Studstrup:

The Governor's Office has asked whether two Commissioners may be reappointed to the Land Use Regulation Commission (LURC) prior to the expiration of their present terms and thus prior to the positions becoming vacant. Our answer is a qualified yes.*

The Governor is empowered to appoint Commissioners to LURC, subject to review by the Joint Standing Committee on Natural Resources and to confirmation by the Legislature. 12 M.R.S.A., § 683; see also MAINE CONST., art. V, pt. 1, § 8. No constitutional or statutory provision speaks to whether the Governor may appoint a Commissioner to fill a vacancy prior to the opening of that vacancy.

The authorities, however, are unanimously in favor of the proposition that "prospective appointments" may be made where "the term of the appointing power extends beyond the point of time when the vacancy arises," Pattangall v. Gilman, 115 Me. 344, 98 A. 936 (1916); see 63 Am. Jur.2d, Public Officers and Employees, § 98; Annot.: Power to Appoint Public Officer for Term Commencing at or After Expiration of Term of Appointing Officer or Body, 75 A.L.R.2d 1277; see also Interdepartmental Memorandum, dated July 29, 1975, from S. K. Studstrup to J. M. Hochadel, on the Posting of Candidate for Superior Court Bench. Therefore, it is clear that the Governor may appoint a Commissioner to a vacancy which has not yet arisen but which will arise during the Governor's tenure in office.

* We understand that the positions in question become vacant on July 9, 1980, and that the Governor wishes to fill these vacancies prospectively in order that the appointees may be confirmed when the Legislature meets in special session on May 22, 1980.

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It should be noted that the converse of the above rule is also true:

"[I]f the term of the appointing power does not extend until a vacancy arises in the appointive office, no appointment, prospective or otherwise, may be made by the appointing power." Pattengall v. Gilman, supra.

The reason is that the appointing power cannot forestall the rights and prerogatives of his own successor by appointing persons to offices whose terms begin after his power to appoint has expired. Id. As long as the Governor makes an appointment of a Commissioner to a vacancy which will arise during the Governor's tenure, such prospective appointment is valid.

I hope this information is helpful. Please feel free to contact me if we can be of any further assistance.

Sincerely,

Stephen L. Diamond

STEPHEN L. DIAMOND
Deputy Attorney General

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