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RICHARD S. COHEN
ATTORNEY GENERAL



80-102

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

June 17, 1980

Glenn Manuel, Commissioner
Department of Inland Fisheries
and Wildlife
284 State Street
Augusta, Maine 04330

Dear Commissioner Manuel:

This letter responds to your inquiries concerning:
(1) the duration of the terms of the seven-member Inland Fisheries and Wildlife Advisory Council (the "Council") as established prior to January 1, 1980 under 12 M.R.S.A. §1955 and (2) the membership of the Council after January 1, 1980, pursuant to guidelines set forth by P.L. 1979, c. 543 in amending 12 M.R.S.A. §1955.

We conclude that Section 84 of P.L. 1979, c. 543 (effective 1/1/80) provides an explicit resolution of these questions. It reads as follows:

Present members of the council shall serve until the expiration of their terms. After the effective date of this Act,¹ appointments may be made for any management unit not then represented on the advisory council, except that the total number of council members shall not exceed the total number of management units.

We also think it is advisable to express our view on the current status of Council membership, particularly in light of the increase in members (from 7 to 8) and the change in geographical criteria for representation (from an Executive Council District basis to a Wildlife Management Unit (WMU) basis) brought about by P.L. 1979, c. 543.

¹January 1, 1980

I. FACTUAL BACKGROUND

The Inland Fisheries and Wildlife Advisory Council was established by P.L. 1929, c. 331, §4 and consisted of seven members who were to be appointed by the Governor. One member was to be chosen from each of the then-existing governor's "councilor districts" for a term of six years. District representation was as follows:

- A. One member to represent Oxford and York Counties;
- B. One member to represent Cumberland County;
- C. One member to represent Sagadahoc, Androscoggin and Franklin Counties;
- D. One member to represent Hancock, Waldo, Knox and Lincoln Counties;
- E. One member to represent Kennebec and Somerset Counties;
- F. One member to represent Piscataquis and Penobscot Counties;
and
- G. One member to represent Aroostook and Washington Counties.

This scheme was altered by P.L. 1979, c. 255, which substituted the WMU's for the old Executive Council districts and provided that the members of the new Advisory Council could be appointed to no more than two consecutive three-year terms. In addition, the Act contained a transition provision which specified that present members of the Council would serve until the expiration of their terms, and that after the effective date of the Act, appointments could be made for any management unit not then represented on the Council, with the provision that the total number of members could not exceed the total number of management units.² With these provisions in mind, we now turn to the question of the appointments which will be permissible upon the expiration of the terms of present Council members.

²These provisions were later reenacted to incorporate them into a recodification of the Inland Fisheries and Wildlife statutes. P.L. 1979, c. 543, §§2, 84. Their effective date thus became that of Chapter 543: January 1, 1980.

II. Status of the Council Upon Expiration of Current Terms

In order to assist you and the Governor in filling vacancies as they develop, we will discuss the situation of each current Council member in the order in which their terms expire. All information referred to in this section is taken from records in the Office of the Secretary of State and from the Department of Inland Fisheries and Wildlife.

A. RALPH L. NOEL (Auburn, Androscoggin County; WMU 8)

Mr. Noel was originally appointed to represent Sagadahoc, Androscoggin and Franklin Counties for a six-year term which expires on July 8, 1981. At that time he could not be appointed to represent WMU 8, in which he resides, in that such an appointment would conflict with that of Mr. Robert E. Moore, who would still be serving out his original term in representation of Cumberland County, and who also resides in WMU 8. The only way for Mr. Noel to be reappointed, therefore, would be upon the expiration of Mr. Moore's term on November 1, 1983.

B. GEORGE E. PRENTIS (Rumford, Oxford County; WMU 4)

Mr. Prentis was originally appointed to represent Oxford and York Counties to serve out a six-year term which expires on November 5, 1981. Upon expiration of his term, he could not be appointed to represent WMU 4, because his appointment would conflict with that of Mr. Alva Appleby and Mr. Rodney Ross who would still be serving out their original terms, and both of whom reside in WMU 4. The only way for Mr. Prentis to be reappointed, therefore, would be upon the expiration of Mr. Ross's term on November 27, 1985.

C. FRANCIS D. DUNN (Patten, Penobscot County; WMU 1)

Mr. Dunn was appointed by Governor Brennan to represent WMU 1 for a three-year term which will expire on May 21, 1983. At that time he will be eligible for re-appointment to represent WMU 1 for one additional three-year term.³

³Under the current law, 12 M.R.S.A. §7033, a member may serve no more than two consecutive three-year terms.

D. ROBERT E. MOORE (Casco, Cumberland County; WMU 8)

Mr. Moore was originally appointed to represent Cumberland County for a six-year term which expires on November 1, 1983. At that time he could be appointed to a three-year term to represent WMU 8, since the only other current Council member residing in that WMU, Mr. Noel, could not have been reappointed because of the location of Mr. Moore's residence.

E. DENNIS L. SMITH (Otter Creek, Hancock County; WMU 6)

Mr. Smith was appointed to represent Hancock, Waldo, and Knox Counties for a six-year term which expires on November 1, 1983. At that time he could be reappointed to represent WMU 6. (Note: Nathan Cohen will also be eligible for appointment from WMU 6 on November 1, 1983 - only one person may represent each WMU.)

F. NATHAN COHEN (Eastport, Washington County; WMU 6)

Mr. Cohen was appointed to represent Aroostook and Washington Counties for a six-year term which expires on November 1, 1983. At that time he could be appointed to represent WMU 6. (Note: Dennis Smith will also be eligible for appointment from WMU 6 on November 1, 1983 - only one person may represent each WMU.)

G. ALVA S. APPLEBY (Skowhegan, Somerset County; WMU 4)

Mr. Appleby was appointed to represent Kennebec and Somerset Counties to serve a six-year term which expires on October 23, 1984. At that time he could not be appointed to represent WMU 4 because his appointment would conflict with that of Mr. Rodney Ross who would still be serving out his original term, and who resides in WMU 4. The only way for Mr. Appleby to be reappointed, therefore, would be upon the expiration of Mr. Ross's term on November 27, 1985.

H. RODNEY W. ROSS (Brownville, Piscataquis County; WMU 4)

Mr. Ross was appointed to a six-year term on November 28, 1979. His appointment was confirmed on December 10, 1979, and will expire on November 27, 1985. According to records from the Office of the Secretary of State, he was appointed to represent WMU 1. It appears that the

portion of the records which indicate he represents WMU 1 is incorrect for two reasons: (1) Designation of representation according to WMU's could not be made until on or after January 1, 1980 (the effective date of the legislation) and (2) Mr. Ross resides in Piscataquis County which is located in WMU 4 - not WMU 1.

The information concerning Mr. Ross should be corrected to show that he was appointed to the Council to represent Piscataquis and Penobscot Counties. Upon expiration of his term on November 27, 1985, he would be eligible for appointment for a three-year term to represent WMU 4, since the other current Council members residing in that WMU, Mr. Prentis and Mr. Appleby, could not have been reappointed because of the location of Mr. Ross's residence.

I. FUTURE APPOINTMENTS: UNREPRESENTED WILDLIFE MANAGEMENT UNITS

When Council membership is fewer than eight, the Governor may, at that time, appoint a resident of an unrepresented WMU to serve on the Advisory Council. Total Council membership may not exceed the total number of Wildlife Management Units (8). P.L. 1979, c. 543, §84. Thus, for the reasons set forth above, upon the expiration of Mr. Noel's term on July 8, 1981, the Governor could appoint a member to represent one of the then unrepresented WMU's: WMU 2, WMU 3, WMU 5, and WMU 7. The remaining WMU's could then become represented upon the expirations of the terms of the remaining Board members, which expirations will occur in the order listed above.

I hope this is of some assistance to you. Please let me know if you have any further questions.

Sincerely,



CABANNE HOWARD

Senior Assistant Attorney General

CH:njm