

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

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

August 7, 1980

David Flanagan, Esquire
Office of the Governor
State House
Augusta, Maine 04333

Dear Mr. Flanagan:

You have sought an interpretation from this office of the following language found in 22 M.R.S.A. § 1471-B(1) establishing the terms of members of the newly constituted Pesticides Control Board ("the Board"):^{1/}

The term shall be for 4 years, except that of the initial appointees, 2 shall serve 4-year terms, 2 shall serve 3-year terms and one shall serve a one-year term.

22 M.R.S.A. § 1471-B(1).

Since the Board as constituted by this statute has seven members, the question raised by your request is what is the length of the initial term of the two Board members not specified in the statute. Our conclusion, based on a determination that legislative oversight has resulted in an inadvertent omission from the statute which undercuts the legislative intent, is that the remaining two members should serve initial terms of two years.

The statute in its present form is ambiguous on its face because it creates a seven-member Board but fails to specify the initial length of two of those members' terms. The original Legislative Document creating a new Pesticides Control Board (L.D. 1905, 109th Legislature, 2nd Session (1980))

^{1/} The present Board was created by P.L. 1979, c. 644.

specifically provided for "staggered" terms and set out initial terms for each new member, including two-year terms for two of the members.^{2/} The present language first appears in the new draft of that bill (L.D. 1966, 109th Legislature, 2nd Session (1980)) and is repeated in an amendment (S-444, 109th Legislature, 2nd Session (1980)), which slightly changed the makeup of the Board.

While none of the relevant Statements of Fact shed any light on the problem, and while there is no relevant legislative debate, the procedural history of the statute described above appears clearly indicative that the Legislature intended to establish a system of staggered terms for the new Board. This intent appears in the original Legislative Document and is carried through, with the single defect under discussion, in L.D. 1966 and S-444. Analysis of the legislative history shows that the reasons for a new draft of L.D. 1905 and for amending that draft by S-444 did not involve the issue of the terms of the Board members. Further, there is no indication or suggestion that the failure to designate terms for two initial appointees in the new draft and its amendment was in any way intentional. The procedural history of the statute therefore clearly establishes the Legislature's intent to create a staggered-term mechanism.

Having reached the conclusion that the Legislature intended to establish a Board with staggered terms, the remaining question is what the length of these terms should be. The statute provides for a maximum term of four years so that any term in excess of four years would not accord with the statute. It also establishes initial terms of four, three, and one years. Finally, as noted above, the original bill also provided for a maximum term of four years and distributed the initial terms from four to one year, with two members serving initial terms of two years. We must conclude that the Legislature intended two of the members under the present law to serve initial terms of two years.

Our conclusion is supported by the absence of an alternative interpretation. The present language regarding initial terms was carried through two different versions of the bill. In addition, the word "staggered," which appeared in the original Legislative Document, L.D. 1905, was deleted in L.D. 1966 and the subsequent amendment, S-444. This evidence might suggest an argument that the Legislature intended not to specify initial terms for two members. But such members must have some terms. The question raised is how long their initial terms are to be. The possibility

^{2/} L.D. 1905 specifically provided for initial terms for all seven Board members. Two were to serve terms of one year; two, two years; two, three years; and one was to serve a four-year term. L.D. 1905, § 2 at 10.

that the unspecified terms were to be of four years' duration, on the ground that this is the length of the usual term set out by the statute, must be rejected since the statute already stipulates that only two of the initial appointees are to serve four-year terms.^{3/} Nor does the deletion of the word "staggered" from the statutory language support a different result. The statute clearly intended to establish a mechanism for staggered terms similar to that of other boards created by statutes which do not contain the word "staggered." See, e.g., 26 M.R.S.A. § 968(1) (Maine Labor Relations Board); 37-A M.R.S.A. § 1402 (Board of Trustees, Maine Veterans Home). Thus, the presence of that word is not critical to the employment of that mechanism. And it is clear that the use of staggered terms on a board serves very specific and useful purposes and should therefore be carried out where the intention of the Legislature is clear. See Opinion of the Attorney General, #79-82 (April 27, 1979).

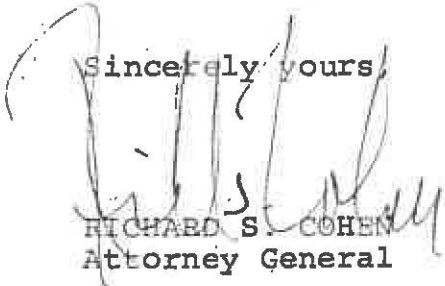
Based on the language of the statute and its history, it is our opinion that the Legislature intended that the initial terms of all the original appointees be staggered so that the Board would never be totally vacant at once and to provide for a continuing core of experienced members as new members were appointed. Id. The Legislature, however, failed to carry out this scheme by inadvertently omitting to include language whereby two original appointees would serve for an initial term of two years. There is considerable precedent for the proposition that, where a legislature has inadvertently omitted language from a statute and that omission, if given effect, would undercut the legislative intent, a court is justified in construing the statute as if the omitted language appeared. Inhabitants of Gray v. County Commissioners, 83 Me. 429 (1891) (court read additional section number into appeal statute to accord with legislative intent); e.g., People v. Scott, 312 N.E.2d 596 (Ill. 1974); Walker v. Kilborn, 249 So.2d 736 (Ala. Civ. App. 1971). Other more general precepts of statutory construction are equally applicable to the present situation. First, statutes are to be read as a whole, harmonizing all parts, to effectuate legislative intent, e.g., In re Belgrade Shores, Inc., 359 A.2d 59 (Me. 1976). Second, statutes are never to be given a construction which would lead to an unreasonable result, since such an intent cannot be imputed to the Legislature, e.g., Woodcock v. Atlass, 393 A.2d 167 (Me. 1978). Finally, and most importantly, the basic goal of statutory construction is to give effect to legislative intent, e.g., State v. Hussey, 381 A.2d 665 (Me. 1978), and our Law Court has recognized that sometimes to reach this goal requires going beyond the specific words of a statute. New England Tel. & Tel. Co. v. P.U.C., 376 A.2d 448 (Me. 1977). Applying these principles in light of the clear intent of the Legislature in enacting the present version of § 1471-B to provide for staggered initial terms of Board members, we conclude that the statute should be read as if it specified two-year terms for the remaining two members in order to fully implement that intention.

3/ Similar reasoning would apply to an argument that the terms of the omitted Board members are established at four years by 5 M.R.S.A. § 2.

While we believe that this legal conclusion carries out the intent of the Legislature and is supported by legal authorities, we view your suggestion of legislation to correct the ambiguity as an advisable course.

If you have any further questions, please feel free to contact this office.

Sincerely yours,



RICHARD S. COHEN
Attorney General

RSC/ec