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AUGUSTA, MAINE 04333

December 18, 1980

Henry E. Warren, Commissioner
Department of Environmental Protection
State House - Station 17
Augusta, Maine 04333

Dear Commissioner Warren:

You have asked whether the appointment of a person to replace a member leaving the Board of Environmental Protection before the expiration of his term is an appointment for the full statutory four-year term or for the unexpired portion of the prior term. Our answer is that under the governing statute, 38 M.R.S.A. § 361, interpreted in light of applicable principles of law, an appointment to the Board is for the full, statutorily established four-year term notwithstanding that the appointee takes the place of a member whose term had not expired.

Section 361 provides in relevant part:

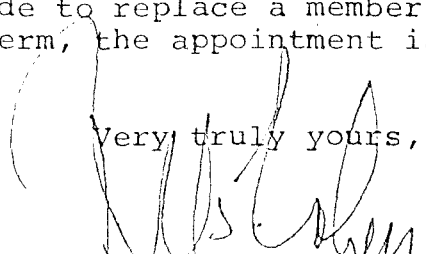
"[T]he members shall be appointed for a term of 4 years and until their successors are appointed and duly qualified."

The section does not on its face answer the question you have asked. The general rule applicable to the interpretation of its language is that where the law establishes only the duration of a term of office and does not also fix the time for the beginning or ending of the term, or both, each appointment to fill the office is for the duration specified. Opinion of the Justices, 61 Me. 601 (1873); Wilson v. McCarron, 112 Me. 181, 91 A. 839 (1914); People v. Nickel, 100 P.2d 1075, 9 Ca. 783 (1909); Smith v. Kenyon, 271 NYS 939, 241 App. Div. 177 (1934); Marvel v. Camden County, 57 A.2d 455, 137 N.J. Law 47 (1948); 67 C.J.S. Officers § 69; 63 Am. Jur.2d Public Officers and Employees § 155. Under such language, a vacancy occurring upon the departure of a member prior to the expiration of his term is said to

be in the office itself,* so that the office is properly filled for the full duration of the specified term.

While a provision of law may set the date for the beginning or ending of a term either explicitly -- e.g., "shall take office on" a specified day -- or by implication -- e.g., by staggered or rotating terms -- the statute in question does neither.** The duration of the term only is specified and the application of the general rule indicates that when an appointment is made to replace a member leaving the Board before the expiration of his term, the appointment is for a full 4-year term.***

Very truly yours,


RICHARD S. COHEN
Attorney General

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- * On the other hand, where the duration and the beginning or the end, or both, of the term are specified, a vacancy occurring prior to the expiration of a term is said to be a vacancy in the term, properly filled for the unexpired portion of the term.
- ** The only additional language in the section relating to the appointment of Board members specifies only that they shall "represent the broadest possible interest and experience which can be brought to bear in the implementation of this Title and all other laws which the Board is charged with the duty of administering."
- *** This result is consistent with earlier opinions of this office on similar questions. See Opinion to Senator Gerard P. Conley, pp. 4-5, April 27, 1979; Opinion to Gordon L. Weil, May 30, 1979.