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ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

March 23, 1982

James S. Henderson
Deputy Secretary of State
State House
Augusta, Maine 04333

Dear Mr. Henderson:

This will respond to your inquiry about the impact of the repeal and substantial re-enactment of the Dental Practice Act. For the reasons set out below, it is our opinion that the repeal and re-enactment of the legislation did not abolish the Board of Dental Examiners and substitute a new board. The membership and terms of the prior Board of Dental Examiners continue uninterrupted, despite the recent legislative changes.

I

The starting point for statutory interpretation is the language of the statute. Cummings v. Town of Oakland, Me., 430 A.2d 825, 829 (1981); Mundy v. Simmons, Me., 424 A.2d 135, 137, (1980). The statute formerly provided that:

The Board of Dental Examiners, as heretofore established and hereinafter in this chapter called the "Board" shall consist of five members of the dental profession, one dental hygienist and one representative of the public appointed by the Governor. . . . One dentist member shall be appointed annually, as the terms of the present members expire, hold office for five years from the first day of January and until a successor is appointed. The public member shall be appointed to a five-year term and shall serve until his successor is appointed.

32 M.R.S.A. §1071, repealed by P. L. 1981, c. 440, § 2. The Dental Practice Act was substantially revised in 1981. The former legislation was repealed and the following was enacted in its place:

The Board of Dental Examiners, in this chapter called the "Board", shall consist of seven members appointed by the Governor as follows: five members of the dental profession, one dental hygienist, and one representative of the public. . . .One dentist shall be appointed annually, as the terms of the present members expire, to hold office for five years from the first day of January and until a successor is appointed.The term of dental hygienist is four years, except that the member shall serve until a successor is appointed. . . .The public member shall be appointed to a five-year term and shall serve until a successor is appointed.

P. L. 1981, c. 440, § 2, enacting 32 M.R.S.A. §1071 (emphasis supplied). The virtually identical language of the former and the current statutes makes clear that the 1981 changes did not result in any substantive change in the Board of Dental Examiners. The composition of the board, the terms of office and the manner of election remain unchanged. Moreover, the statute makes clear that dentists shall be appointed to the Board only "as the terms of present members expire." Id. It is presumed that the Legislature will not include any surplusage in the statute. Labbe v. Nissen Corp., Me., 404 A.2d 564, 567 (1979) (citations omitted). If it were concluded that P.L. 1981, c. 440, § 2 abolished the Board of Dental Examiners, there would be no present members of the Board. Therefore, in order to give the language of the statute meaning, it should be concluded that the 1981 changes did not abolish the Board of Dental Examiners, thereby necessitating the appointment of seven new members.

While there is no similar provision of continuity for the appointment of dental hygienists and public members, we believe that the same conclusion applies to them. One purpose of the

legislation was to stagger the terms of the five members of the dental profession.^{1/} Since the Board has only one dental hygienist and a public member, there was no need to stagger these terms and thus no need to expressly provide that those members continue to serve until the expiration of their present terms. Accordingly, the failure to make specific reference to the incumbent hygienist and public member should not be taken to reflect a different legislative intent with respect to those individuals. It is far more reasonable to assume that the Legislature intended that they, like the dentist members, would serve out the present terms.

II

In interpreting a statute, it is appropriate to examine extrinsic aids in order to determine the true legislative intent because "the fundamental rule of statutory construction is to ascertain the real purpose and intent of the legislature which when discovered, must be made to prevail." Franklin Property Trust v. Foresite, Inc., Me., 438 A.2d 218, 222-23 (1981) (citations omitted). The legislative history is a proper matter to be considered in ascertaining legislative intent. Rines v. Scott, Me., 432 A.2d 767, 768 (1981); Finks v. Maine State Highway Commission, Me., 328 A.2d 791, 797 (1974). No legislative history has been discovered to support the proposition that the 1981 legislation was intended to abolish the Board of Dental Examiners and replace it with a newly-constituted Board.

^{1/}This is a common legislative practice with licensing boards. See 32 M.R.S.A. § 63 (administrators of medical care facilities); 32 M.R.S.A. § 73 (ambulance operators); 32 M.R.S.A. § 211 (architects and landscape architects); 32 M.R.S.A. § 501 (chiropractors); 32 M.R.S.A. § 1151 (electricians); 32 M.R.S.A. § 1451 (funeral directors); 32 M.R.S.A. § 1601 (cosmotologists); 32 M.R.S.A. § 1660-A (hearing aid dealers); 32 M.R.S.A. § 1671 (land surveyors); 32 M.R.S.A. § 2001 (arborists); 32 M.R.S.A. § 2151 (nurses); 32 M.R.S.A. § 2351 (oil burner men); 32 M.R.S.A. § 2415 (optometrists); 32 M.R.S.A. § 2561 (osteopathic physicians); 32 M.R.S.A. § 2851 (pharmacists); 32 M.R.S.A. § 3001 (physical therapists); 32 M.R.S.A. § 3263 (doctors); 32 M.R.S.A. § 3401 (plumbers); 32 M.R.S.A. § 3821 (psychologists); 32 M.R.S.A. § 3971 (accountants); 32 M.R.S.A. § 4051-A (real estate brokers); 32 M.R.S.A. § 4186 (social workers); 32 M.R.S.A. § 4854 (veterinarians); 32 M.R.S.A. § 4907 (geologists); 32 M.R.S.A. § 5004 (foresters); 32 M.R.S.A. § 6010 (speech pathologists); 32 M.R.S.A. § 6208 (substance abuse counselors).

"The 'statement of fact' attached to the Act's legislative document is a proper and compelling aid to ascertaining the legislative purpose and intent". Franklin Property Trust v. Foresite Inc., 438 A.2d at 223 (citation omitted). As originally introduced, the statement of fact attached to the legislative document introducing the Dental Practice Act provided that "[t]his bill revises and reallocates the provisions of law regulating dentists, dental hygienists, dental auxiliaries, and denture technologists." S.P. 298, L.D. 860, 110th Leg. (1981). There was, therefore, no announced intention to alter the composition or the membership of the Board of Dental Examiners by the sponsors of the legislation.

The Dental Practice Act was substantially altered by the Committee on Health and Institutional Services. A new draft of the act was approved by the Committee and sent to the House and Senate. S.P. 633, L.D. 1648, 110th Leg. (1981). Although the new draft "restructure[d] the section on Board of Dental Examiners," *id.*, the Board itself remained essentially unchanged. The composition of the Board and the terms of the offices remained the same. There is no indication in the legislative document that the Legislature intended to abolish the Board of Dental Examiners and replace it. Absent such an intention, manifested by the plain language of the statute or the legislative history of the statute, we conclude that the 1981 amendments did not abolish the Board of Dental Examiners.

III

Finally, the general rules of statutory interpretation support our conclusion about the effect of the repeal and simultaneous re-enactment of the Board of Dental Examiners. Although the statute establishing the Board of Dental Examiners was revised in 1981, "[i]t will not be inferred that the Legislature, in revising and consolidating the laws, intended to change their policy and unless such an intention be clearly expressed." Muniz v. Hoffman, 422 U.S. 454, 470 (1975) (citations omitted). Indeed, a revision of a statute usually is deemed to simply reiterate the declaration of the legislative will. Cram v. Inhabitants of Cumberland County, 148 Me. 515, 522, 96 A.2d 839, 843 (1953). Therefore, unless there is clear legislative intent to the contrary, it will not be presumed that the Legislature intended to substantively alter the Board of Dental Examiners when it revised the statute in 1981.

The manner by which the Legislature effected the change adds further support for this proposition. The change was effected by the simultaneous repeal and re-enactment of the statute. "Where a statute is repealed by a new statute which relates to the same subject matter, and which re-enacts substantially the provisions of the earlier statute, and the repeal and the re-enactment occur simultaneously, the provisions of the original statute which are re-enacted in the new statute are not interrupted in their operation by the so-called repeal; they are regarded as having been continuously in force from the date they were originally enacted."^{2/} 73 AM. JUR. 2d Statutes § 391 (1974). It is presumed, therefore, that the repeal and re-enactment of a legislative act does not interrupt the operation of those provisions of the repealed Act that are re-enacted without any substantive changes.

This conclusion is not altered by the fact that the statute that was repealed and simultaneous re-enacted created a public office. "If a statute creates a public office, the repeal of the statute, accompanied by the re-enactment of the substance of it, does not abolish the office and substitute a new one for it; the effect is to continue the old one in force." King v. Uhlmann, 103 Ariz. 136, 139, 437 P.2d 928, 931 (1968) (citations omitted). In Maine, unless there is a substantive change, the repeal and simultaneous re-enactment of a statute creating a public office does not alter the membership or the terms of service of that office. See generally Op. Att'y. Gen. 79-82 (1979).

In conclusion, the plain meaning of the statute, the legislative history of the statute and the general law of statutory interpretation point to the same conclusion: the repeal and simultaneous re-enactment of the Board of Dental Examiners did not abolish the Board, nor did it alter the terms of the present members.

^{2/}Accord, McKibben v. Mallory, 293 So.2d 48, 53 (Fla. 1974); Goldenberg v. Dome Condominium Associates Inc., 376 So.2d 37, 38 (Fla. App. 1979); State ex rel. Iowa Air Pollution Control Commission v. City of Winterset, 219 N.W.2d 549, 551-52 (Iowa 1974); Denver Wood Products Company v. Frye, 202 Neb. 286, 289, 275 N.W.2d 67, 70 (1979); Allied Veterans Council v. Klamath Company, 23 Or. App. 653, ___, 544 P.2d 190, 194 (1975). Cf. Thut v. Grant, Me., 281 A.2d 1 (1971) (repeal and simultaneous enactment of paternity laws does not alter legal rights vested at the time of change); State v. Bean, Me., 195 A.2d 68 (1963) (change in law will not affect acquired rights). See generally Annot., 77 A.L.R.2d 336, 345, 371 (1970).

I hope that you find this information helpful. If you have any further questions, please feel free to contact me.

Sincerely,

p. J. Brann

PETER J. BRANN
Assistant Attorney General

PJB/dab