

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



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

February 6, 1985

Honorable Richard L. Trafton  
Maine State Senate  
State House Station #3  
Augusta, Maine 04333

Dear Senator Trafton:

This will respond to your oral request for an Opinion from this Department concerning the term of office of the person appointed to fill the anticipated vacancy in the office of Sheriff of Androscoggin County. For the reasons discussed below, it is the Opinion of this Department that the appointee will hold office until January 1, 1987.

Article IX, § 10 of the Maine Constitution provides that Sheriffs shall be elected within their respective counties and "shall hold their offices for 2 years from the first day of January next after their election . . . ." With specific reference to vacancies in the office of Sheriff, the Constitution provides as follows:

Whenever the Governor upon complaint, due notice and hearing shall find that a sheriff is not faithfully or efficiently performing any duty imposed upon him by law, the Governor may remove such sheriff from office and appoint another sheriff in his place for the remainder of the term for which such removed sheriff was elected. All vacancies in the office of sheriff, other than those caused by removal in the manner aforesaid, shall be filled in the same manner as is provided in the case of judges and registers of probate.

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Article VI, § 6 of the Maine Constitution provides as follows:

Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in, at the biennial election on the Tuesday following the first Monday of November, and shall hold their offices for 4 years, commencing on the first day of January next after their election. Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid at the November election, next after their occurrence; and in the meantime; the Governor may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January next after the election aforesaid. (emphasis supplied).

In order to understand this Department's conclusion, it is necessary to examine the historical development of the constitutional provisions quoted above, as well as the context in which the system of biennial elections were established in Maine.

In 1820, Article II, § 4 provided for the election of the Governor and members of the Legislature on the 2nd Monday of September, "annually forever." Thus, when Maine became a State, the term of office of the Governor and members of the Legislature was one year with an election each September. In 1855, the office of County Sheriff was created by the Ninth Amendment to the Maine Constitution as Article IX, § 9 (now § 10), for a two-year term of office with vacancies, other than for removal, being filled in the same manner as provided for judges and registers of probate. See Resolves of 1855, c. 273, § 9. At the same time and by virtue of the same Constitutional Amendment, the offices of Judge and Register of Probate were created, with a four-year term of office. Judges and Registers of Probate were to be elected "at the annual election," and vacancies were to be filled "in manner aforesaid, at the September election, next after their occurrence." Resolves of 1855, c. 273, § 7. Thus, as of 1855, a vacancy in the office of Judge or Register of Probate, as well as Sheriff, would be temporarily filled by the appointment of a person who would hold office until the first day of January following the next annual election at which someone would be elected to complete the unexpired term or commence a new one depending on when the vacancy occurred.

In 1879, however, various provisions of the Constitution, including Article VI, § 7 (now § 6) dealing with Judges and Registers of Probate, were amended to provide for biennial rather than annual elections. See Resolves of 1879, c. 151. The result of these amendments was that a vacancy in the office of Judge or Register of Probate would be temporarily filled by the appointment of a person who would hold office until the first day of January following the next biennial election, at which someone would be elected to complete the unexpired term or commence a new one, again depending on when the vacancy occurred. Since the office of Sheriff carries a two-year term, the result of the 1879 amendments was that the next biennial election coincided with the regularly scheduled election for Sheriff. Consequently, the person appointed to fill a vacancy in the office of County Sheriff holds office for the remainder of the incumbent's expired term, i.e.,<sup>1/</sup> the first day of January following the next biennial election.

This conclusion is consistent with an Opinion of this Department issued on August 4, 1955, as well as an Opinion of the Justices, 137 Me. 347, 16 A.2d 585 (1940). In the 1955 Opinion, this Office addressed the specific question you have now raised and concluded that the Constitution did not contemplate the holding of a special election to fill a vacancy for Sheriff. In Opinion of the Justices, 137 Me. 347, 16 A.2d 585 (1940), where the question involved a vacancy caused by the death of a Judge of Probate in December, following his re-election to a four-year term in September, 1940, the Justices stated:

As to the future vacancy, we are of opinion that pending an election to fill the same at the September election, 1942, the Governor, with the advice and consent of the Council, may appoint an incumbent who shall hold his office until the first day of January, 1943.

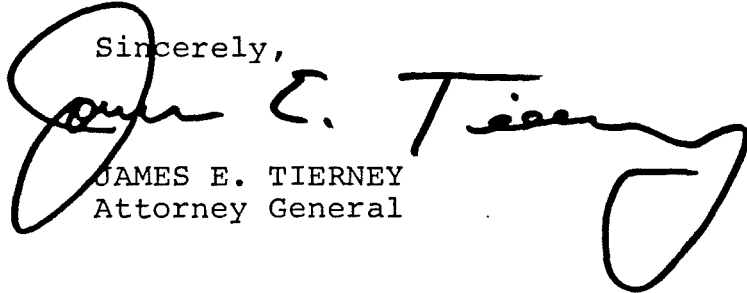
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<sup>1/</sup> This conclusion does appear to render a portion of Article IX, § 10 redundant in that all vacancies in the office of Sheriff caused by removal or otherwise, are filled by a gubernatorial appointee who holds office for the remainder of the incumbent's unexpired term. Nevertheless, it seems obvious that the Constitutional Amendments of 1879 were intended to establish a system of biennial elections for all offices, and there is no support for the conclusion that a special annual election would be required to fill a vacancy in the office of County Sheriff.

For the foregoing reasons, it is the Opinion of this Department that the person appointed by the Governor to fill a vacancy in the office of Sheriff holds office until the first day of January after the next biennial election in November, i.e., January 1, 1987.

I hope this information is helpful to you, and please do not hesitate to contact this Office if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is written in a cursive style with a large, looping initial "J".

JAMES E. TIERNEY  
Attorney General

JET/ec

cc: Governor Joseph E. Brennan