

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)

JAMES E. TIERNEY
ATTORNEY GENERAL



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

September 16, 1985

Honorable Harry L. Vose
24 Third Street
Eastport, Maine 04631

Dear Representative Vose:

This will respond to your letter of September 10, 1985, in which you request this Department's opinion concerning the following questions:

1. If an elected county treasurer is so physically incapacitated that she can no longer perform the duties of her office, may the Governor appoint a replacement treasurer under 30 M.R.S.A. § 601?
2. May the County Commissioners legally prevent the appointment of a deputy treasurer who does not meet their approval?

For the reasons which follow, it is the Opinion of this Department that, pursuant to 30 M.R.S.A. § 601, the Governor may not exercise his authority to appoint a replacement treasurer unless and until a vacancy in that office exists, either by resignation, death, removal or otherwise. It is further the Opinion of this Department that the Board of County Commissioners does have the authority to prevent the appointment of a deputy treasurer, pursuant to 30 M.R.S.A. § 651, who does not meet its approval.

30 M.R.S.A. § 601, provides that when a vacancy in the office of county treasurer occurs, "the Governor may appoint a suitable resident of the county who, . . . , shall be treasurer

until the first day of January following the next biennial election. . . . "^{1/} In the absence of a vacancy in office, the Governor has no authority to appoint a treasurer in accordance with 30 M.R.S.A. § 601. Once a vacancy in that office occurs, either by way of death, resignation, removal or otherwise, a replacement may be appointed by the Governor pursuant to the provisions of Section 601.

30 M.R.S.A. § 651 (1984-1985 Supp.) provides that "[t]he treasurer of the several counties may appoint deputy treasurers, subject to the requirements of section 64-A, for their respective counties."^{2/}

^{1/} 30 M.R.S.A. § 601 provides in its entirety:

A treasurer shall be elected for each county by the legally qualified voters thereof. He shall be a resident of such county and shall serve for a term of 4 years. Neither the Attorney General, county attorney, clerk of courts, sheriff of the county nor any of his deputies shall be county treasurer.

If a person so chosen declines to accept or a vacancy occurs, the Governor may appoint a suitable resident of the county who, having accepted the trust, given bond and been sworn, shall be treasurer until the first day of January following the next biennial election, at which said election a treasurer shall be chosen for the remainder of the term, if any; but in any event he shall hold office until another is chosen and qualified.

^{2/} 30 M.R.S.A. § 651 (1984-1985 Supp.) provides in its entirety:

The treasurers of the several counties may appoint deputy treasurers, subject to the requirements of section 64-A, for their respective counties. Such deputy treasurer shall assist the treasurer in performing the duties of his office. He shall give bond to the county for the faithful discharge of his duties in such sum as the county commissioners order and with such sureties as they approve in writing thereon, the premium of such bond to be met by the county. The deputy treasurer shall act as treasurer in the event of a vacancy until a treasurer is chosen in accordance with section 601.

Section 64-A of Title 30, subsection 1, provides in relevant part:^{3/}

All county officers or department heads shall submit to the county commissioners, . . . , the name of any person the county officer or department head proposes to employ The county commissioners . . . may approve the employment of the person . . . or, if approval is withheld . . . , shall, within 14 days after the name or names have been submitted, notify the county officer or department head of the reasons for their disapproval or failure to make a selection.^{4/}

^{3/} 30 M.R.S.A. § 64-A(1) provides in its entirety:

1. Employment. All county officers or department heads shall submit to the county commissioners or the County Personnel Board, if one has been established under subchapter VII, the name of any person the county officer or department head proposes to employ or the names of more than one person from which the county commissioners or personnel board are to select a person for employment. The county commissioners or the County Personnel Board may approve the employment of the person or select a person for employment or, if approval is withheld or a selection is not made, shall, within 14 days after the name or names have been submitted, notify the county officer or department head of the reasons for their disapproval or failure to make a selection.

^{4/} Subsection 2 of 30 M.R.S.A. § 64-A requires that "[a]ll county employees shall be appointed without regard to any political affiliation and solely on the basis of professional qualifications relating to the work to be performed or potential for acquiring those qualifications."

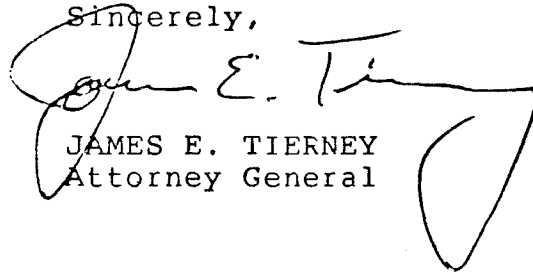
Finally, 30 M.R.S.A. § 66 provides as follows:

The county commissioners shall have final authority over the operation of all county offices by elected or appointed county officers, except in circumstances for which a County Personnel Board has been established under subchapter VII with the powers and duties set forth in that subchapter and in section 64-A. It is the intent of this section that the county commissioners shall act as a board and not on an individual basis in exercising this authority.

In view of the foregoing, it is apparent that the county commissioners have the statutory authority and duty to approve the selection of a deputy treasurer as well as other county employees.

I hope this information is helpful to you, and please feel free to contact this Office if we can be of further assistance.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec