

MAINE STATE LEGISLATURE

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

February 17, 1987

Honorable John L. Martin
Speaker of the House
of Representatives
State House Station #2
Augusta, Maine 04333

Dear Speaker Martin:

Your letter of February 11, 1987 seeks the opinion of this Department concerning the proper construction of 20-A M.R.S.A. §§ 1251 and 1254, governing the term of office of a director of a school administrative district elected to fill a vacancy occurring during the course of a previous director's term. For the reasons which follow, it is the opinion of this Department that a person elected to fill a vacancy as director of a school administrative district serves only for the unexpired portion of the term.

The terms of office of director of school administrative districts are established by § 1251(3), which provides expressly for staggered terms of office, with a portion of the full membership elected at each municipality's regular election. The statute further provides that the directors have fixed terms of 3 or 4 years, depending upon whether the member municipalities have annual or biennial elections, and that the terms run from the date of those elections. Section 1254(3) authorizes the municipal officers of the affected municipality to appoint an interim director "to serve until the next annual municipal election" in event of a vacancy occurring during a director's term. Thereafter, the statute merely provides that a new director be elected at the next municipal election "to fill the vacancy," without specifying whether the newly-elected director merely completes the term of the prior director or is given a full term.

Your question requires a determination of the likely intention of the Legislature, since

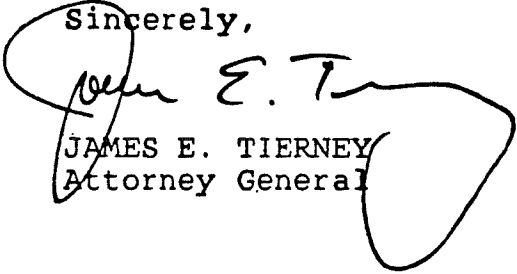
only the legislature can establish a public office (other than a constitutional office) as an instrumentality of government. Whether the creation of the office is necessary or expedient, its duties, its powers, its beginning, its duration, its tenure, are all questions for the legislature to determine and be responsible to the people for their correct determination.

Opinion of the Justices, 343 A.2d 196, 203 (Me. 1975), quoting State v. Butler, 105 Me. 91, 96-97, 73 A. 560 (1909). This Department has consistently offered the Opinion that a statutory provision establishing staggered terms of office expiring in a regular cycle manifests a legislative intention that vacancies be filled only for the unexpired portion of the term. In order to maintain the staggered terms, it is necessary to view the term as attaching to the office or position, and not to the individual director. This conclusion has been reached in the context of a variety of analogous statutory provisions. See, e.g., Op.Me.Att'y Gen. 82-35 (State Board of Education); 80-18 (Maine Milk Commission); 79-82 (Maine Labor Relations Board); and September 7, 1977 (Land Use Regulation Commission).

In anticipation of this conclusion, you have inquired further as to the effect of a municipal election to fill such a vacancy, but purporting to confer a full term upon the director elected. As set forth in the Opinions cited above, all dealing with gubernatorial appointments, the appointment can be for no greater term than is available to be filled. Official action purporting to exceed the underlying authority of the appointing officer is simply ineffective as a means of extending the term of office then open. Thus, in the case you pose, when a vacancy occurs early enough in a term to allow it to be filled at the next regular municipal election, the only office to be filled in that election is the remaining term of the director being replaced. The election is effective only to complete the original director's term, and a new election is required upon the expiration of that term.

I trust this advice will reach you and the affected municipality in time to conduct any necessary further election at its town meeting in March.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec