

MAINE STATE LEGISLATURE

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March 29, 1994

Senator Rochelle M. Pingree
Representative Rita B. Melendy
Co-Chairs, Joint Standing Committee on
Housing and Economic Development
State House Station #115
Augusta, ME 04333

Dear Senator Pingree and Representative Melendy:

I am writing in response to your inquiry of March 23, 1994, concerning the process by which Governor John R. McKernan, Jr. proposes to fill the vacancy in the office of Director of the Maine State Housing Authority being created by the resignation of the incumbent, Mr. Dwight Sewall, effective July 1, 1994. The Governor has recently nominated Mr. Sewall's successor, Mr. David Lakari, in order to permit the Legislature to pass upon the nomination during the current session of the Legislature, but proposes to delay the commissioning of Mr. Lakari, if confirmed, until Mr. Sewall has left office. For the reasons which follow, it is the Opinion of this Department that this procedure is consistent with the relevant constitutional and statutory provisions.

The procedure for filling a vacancy in an executive office under the Maine Constitution and statutes is as follows: Article V, Part First, Section 8 of the Maine Constitution provides that "The Governor shall nominate, and, subject to confirmation as provided herein, appoint . . . all . . . civil officers . . . whose appointment is not by this Constitution, or shall not by law be otherwise provided for." Following such nomination, the section provides that the appropriate legislative committee shall review the nomination, and if a majority of members present and voting recommend confirmation, the nomination shall be referred to the Senate, where it shall be final unless the Senate by a vote of two-thirds members present and voting overrides the recommendation. 3 M.R.S.A. § 151 further provides that the committee vote on the nomination shall take place no later than 30 days from the date on which the Governor provides written notice of the

nomination to the President of the Senate and the Speaker of the House of Representatives, and that the vote of the Senate shall take place no later than 45 days following such notice. The next stage in the process is for the Governor to "appoint," as provided in the Constitution, the officer. There is no constitutional or statutory provision specifying the time within which such "appointment" shall be made. The only remaining requirement is that 5 M.R.S.A. § 6 provides that "All public officers appointed . . . shall, within 30 days after being commissioned, qualify to perform the duties of their office," meaning that they must take the oath of office within that time. In short, therefore, the process of filling Executive offices has four stages--nomination, confirmation, appointment (or commissioning) and qualification--and while there are statutory time limits for the confirmation and qualification stages, there is none for the appointment stage.

The statute governing the appointment of the Director of the Maine State Housing Authority is consistent with this scheme. 30-A M.R.S.A. § 4723(2)(C) provides that the Director shall serve a four-year term of office, not at the pleasure of the Governor, and that vacancies shall be filled by appointment by the Governor, subject to review by the Joint Standing Committee of the Legislature having jurisdiction over economic development, and the confirmation by the Legislature. Following this procedure, the Governor has nominated Mr. Lakari, and the nomination has been submitted to your Committee for a recommendation as to confirmation. If your Committee recommends that Mr. Lakari be confirmed, and the Senate does not override the recommendation, the next stage will be for the Governor to appoint (or commission) the nominee. As indicated above, there is no time limit within which the Governor must take this action. Consequently, he may wait until within 30 days of the effective date of Mr. Sewall's resignation to issue Mr. Lakari his commission, and Mr. Lakari may then qualify by taking the oath of office on the date on which the vacancy occurs.

I hope the foregoing answers your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,


MICHAEL E. CARPENTER
Attorney General

MEC:sw

cc: Governor John R. McKernan, Jr.