



State of Maine Board of Corrections



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November 20, 2014

Honorable Paul R. LePage
Governor of Maine
Office of the Governor
1 State House Station
Augusta, Maine 04333

Re: Appointments to the State Board of Corrections

Dear Governor LePage,

This letter is a follow-up to my letter to you dated May 6, 2014, and to discussions I have had with your staff. I am once again respectfully requesting that you move forward with filling the two vacancies on the State Board of Corrections (“the Board”), which vacancies are explicitly reserved for representatives of the executive branch. As explained below, the filling of these vacancies has now become an urgent matter.

As you know, these two vacancies have remained unfilled since May 1, 2014, when Public Law 2013 Chapter 598 took effect. That legislation reduced the size of the Board from nine members to five. Under the transitional provisions of the law, the two members required to be representatives of the executive branch (one of which must be from the Department of Corrections) remain on the Board. Unfortunately, the previous two representatives of the executive branch resigned from the Board prior to this change. Consequently, the Board continues to function with only three members and without representation from the executive branch. Particularly noteworthy is the absence of the Department of Corrections representative, who could provide valuable insights into and perspectives on the issues that the Board continually faces.

Further complicating the situation of these vacancies is the statutory provision defining the quorum for the Board, which was not amended by Public Law 2013 Chapter 598. That provision reads in pertinent part as follows: “Two-thirds of the members of the board constitute a quorum for purposes of voting.” See 34-A M.R.S. § 1802(7). The obvious question that arises is whether, when computing this quorum, “the board” consists of the three members that are actually appointed to it or the five members that would constitute a fully-appointed Board. In other words, is the quorum 2 of the 3 actual members or 4 of the potential 5 members? The Board interprets this provision to mean that the quorum should be computed based only on the three actually appointed members. Nevertheless, the Board recognizes that this interpretation

could be challenged and that there is some risk that a court could ultimately interpret the quorum provision differently.

The uncertainty of this quorum issue coupled with strong indications that counties aggrieved by any future Board decisions will challenge those decisions as invalid for lack of quorum, places the Board in a precarious situation. The Board is conscientiously undertaking its legislative mandate to “implement a coordinated correctional system that demonstrates sound fiscal management, achieves efficiencies, reduces recidivism and ensures safety and security of correctional staff, inmates, visitors, volunteers and surrounding communities.” *See* 34-A M.R.S. § 1801(1)(C). Moreover, under its new statutory authority, the Board is now embarking on a major rulemaking initiative that will put in place the procedures and structures that will achieve the efficiencies and savings that were always envisioned. This will require some hard fiscal decisions by the Board, and it is likely that one or more of the sixteen counties may disagree with at least one of the Board’s many decisions. The three members of the Board understand their roles and are prepared to make these tough and perhaps unpopular decisions in order to benefit the system as a whole and prevent the waste of taxpayer dollars. It would be unfortunate for the correctional system and costly to the taxpayers of Maine if an aggrieved county challenged the Board’s decisions in court on the basis of a lack of quorum, and it would be further damaging to the system and Maine’s taxpayers if such a challenge was successful. A fully litigated successful challenge could take years and potentially invalidate rules, unwind years of decisions, and require the State to dispense further funds to the “aggrieved” counties.

Thankfully, this risk can be easily and quickly avoided by filling the remaining two vacancies. All that is required is for you to appoint them. Unlike the other three members of the Board, the Governor’s appointments of the two executive branch representatives are not subject to review by the Legislature and confirmation by the Senate. *See* 34-A M.R.S. § 1802(1). Accordingly, I respectfully ask that you make these appointments as soon as you are able. I understand that you may have questions, and I will gladly make myself available to speak or meet with you as you may desire.

Thank you for your consideration of this urgent request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ryan Thornell', with a stylized, overlapping loop at the end.

Ryan Thornell