

# 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)

**PUBLIC DOCUMENTS**

OF THE

**STATE OF MAINE**

BEING THE

**REPORTS**

OF THE VARIOUS

**PUBLIC OFFICERS  
DEPARTMENTS AND  
INSTITUTIONS**

FOR THE TWO YEARS

**JULY 1, 1926 - JUNE 30, 1928**

PUBLIC DOCUMENTS, 1926-28

(Explanatory Note)

Three reports in this volume cover periods in variance with the given biennium. They are as follows:

1. The report of the Attorney General covers the period from 1924 to 1928.
2. The report of the Bangor State Hospital covers the period from 1919 to 1928.
3. The report of the department of Inland Fisheries and Game covers the fiscal year ending June 30, 1928. No printed report was made for the fiscal year ending in 1927.

# STATE OF MAINE

---

REPORT

OF THE

# ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

JUNE 30, 1928

gating over \$300. and thereby secure 3½% per month on an amount in excess of the express limitation of said statute.

Yours very truly,

SANFORD L. FOGG,  
*Deputy Attorney General.*

January 20, 1927.

*To His Excellency, Ralph O. Brewster, Governor of Maine.*

DEAR SIR: In answer to your inquiry whether the office of Recorder of a Municipal Court is incompatible with the office of County Treasurer, this department makes the following reply:

The constitution of Maine provides in Section 2 of Article III that no person belonging to any of the three departments of government shall exercise any of the powers properly belonging to either of the others; and Section 2 of Article IX, after listing certain officers, provides that the acceptance of one vacates the other.

The offices specifically mentioned in the constitution do not include either of the offices of recorder or county treasurer, nor are we able to find any decision of our court directly deciding the point in question.

Our court has held, in *State v. Leclair*, 86 Maine 531, that a recorder is not a judicial officer in the sense contemplated by the constitution, and, in the *Opinion of the Justices*, 68 Maine 594, it was determined that a Trial Justice is not to be considered "a justice of an inferior court." In *Stubbs v. Lee*, 64 Maine 195, holding that one who accepts a commission as deputy sheriff thereby vacates the office of Trial Justice, the court say "that two offices are incompatible when the holder cannot in every instance discharge the duties of either:\*\*\*\*\*as if one be under the control of the other."

Although there does not seem to be a direct constitutional prohibition to hold both offices in question, the matter is not free from doubt in the light of some of the decisions.

The functions of the two offices may be inconsistent, as one may be "under the control of the other", so that the court

might properly hold under such circumstances that the acceptance of one of these offices vacates the other.

Respectfully yours,

RAYMOND FELLOWS,  
*Attorney General.*

February 24, 1927.

*Hon. Ralph O. Brewster, Governor of Maine, Augusta, Maine.*

DEAR GOVERNOR BREWSTER: Article III, Section 2 of the Constitution of Maine provides with reference to the three distinct departments of Government:

"No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted."

Article IV, Part Third, Section 10, provides:

"No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which increased during such term except such offices as may be filled by elections of the people, provided, that this prohibition shall not extend to the members of the first legislature."

Article IX, Section 3 states:

"No person holding the office of justice of the Supreme Judicial Court, or of any inferior court, attorney general, county attorney, treasurer of the state, adjutant general, judge of probate, register of probate, register of deeds, sheriffs or their deputies, clerks of the judicial courts, shall be a member of the legislature; and any person holding either of the foregoing offices, elected to, and accepting a seat in the Congress of the United States, shall thereby vacate said office; and no person shall be capable of holding or exercising at the same time within this state, more than one of the offices before mentioned."

Our court has held in *Stubbs v. Lee*, 64 Maine, 195, "that two offices are incompatible when the holder cannot in every instance discharge the duties of either\* \* \* \* as if one be under the control of the other."

The following offices have been held incompatible by the Supreme Judicial Court of Maine:

Municipal Court Judge and member of the legislature.

*Woodside v. Wagg* 71 Maine 209.