

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

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.

Trial Justice and Deputy Sheriff.

Stubbs v. Lee, 64 Maine 197.

Fish and Game Commissioner and member of the legislature.

Opinion of Justices, 95 Maine 585.

Justice of the Peace and Constable.

Pooler v. Reed, 73 Maine 199.

Justice of the Peace and Coroner.

Bamford v. Melvin, 7 Maine 14.

but not Register of Deeds and Trial Justice or Justice of the Peace.

Opinion of the Justices, 68 Maine 594.

Justices of the Supreme Judicial Court cannot be member of an inferior court.

Curtis v. Cornish, 109 Maine 384.

Clerk of Municipal Court not a judicial officer.

State v. LeClair, 86 Maine 522.

The design of the constitutional provisions was to prevent union and exercise of judicial and executive powers in the same person at the same time.

Mathews v. Houghton, 11 Maine 380.

In view of the foregoing constitutional provisions as construed by our court, it is the opinion of this department that a member of the State Highway Commission may hold the office of recorder of a municipal court, nor does there seem to be any reason or authority why a county attorney cannot be at the same time Public Administrator.

A member of the legislature, however, cannot hold at the same time the office of Medical Examiner, Trial Justice or Public Administrator.

It has been repeatedly held that the acceptance of an incompatible office thereby vacates the office first held as completely as by an accepted resignation.

Very respectfully,

RAYMOND FELLOWS,
Attorney General.