

MAINE STATE LEGISLATURE

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February 23, 1933

Honorable Ernest A. Woodman
Member Executive Council
Calais, Maine

Dear Councilor Woodman:

In answer to your inquiry whether the office of Recorder of a Municipal Court is incompatible with the office of alderman, I would respectfully suggest that the Constitution of Maine, in Section 1 of Article III, provides that,--

"The powers of this government shall be divided into three distinct departments, the legislative, executive and judicial."

Section 2 provides that,--

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

Section 2 of Article IX, after listing certain offices, provides that the acceptance of one incompatible office vacates the other.

The offices specifically mentioned in the Constitution do not include either of the offices of Recorder of a Municipal Court or alderman; nor am I able to find any decision of our Court directly deciding the point in question. The Court has held, in the case of State v. LeClair, 86 Me. 531, that a recorder is not a judicial officer in the sense contemplated by the constitution.

Section 24 of the charter of the City of Calais with reference to the Calais Municipal Court, as amended by the Private and Special Laws of 1919, provides that,--

"The governor, with the advice and consent of the council shall appoint a recorder of said court, who shall reside in Calais. He shall be sworn by the judge, and keep the records of said court when requested to do so by said judge. In absence from the courtroom or sickness of the judge, or when the office is vacant, the recorder shall have and exercise all the powers of said judge and perform all the duties required of said judge by this Act, and the signature of the recorder, as such, shall be sufficient evidence of his right to act instead of the judge."

This section appears to clothe the Recorder, under certain conditions, with all the powers and duties of the Judge which might be held to constitute the Recorder a judicial officer.

Whether or not a member of the board of Aldermen belongs to the executive department of the state, the Court has never, as far as I know, decided. If it should be held that the Recorder is a judicial officer and that the Alderman was an executive officer, Section 2 of Article II of the Constitution would seem to prohibit his holding the office of Recorder of the Court.

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. In the absence of any decision of the Court regarding this matter, I would not like to give a definite official opinion.

I am enclosing for your consideration, a copy of a Letter written by Attorney General Robinson under date of January 15, 1929, which may be of some assistance to you in connection with this matter.

Respectfully yours,

Deputy Attorney General

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