

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA December 10, 1935

His Excellency
Governor Louis J. Brann
Governor of Maine
Augusta

My dear Governor Brann:

In answer to your question as to whether one may lawfully hold the office of Judge of a Municipal Court and County Treasurer at the same time, I am pleased to suggest that Section 7 of Chapter 148 of the Revised Statutes provides that,-

"Every trial justice or judge of a municipal court shall render, under oath, an account of all fines and forfeitures upon convictions and sentences before him, and pay them over within two months after he receives the same; to the treasurer of the town, if they accrue to the town, and to the treasurer of the county if they accrue to the state or the county,*****."

Section 8 of the same chapter provides that,-

"Every trial justice or judge of a municipal or police court, before he performs any official act as such justice or judge, pertaining to any criminal process or proceeding, shall give bond to the county in such sum and with such sureties as the county commissioners of said county shall approve, conditioned that he will, during his continuance in office, faithfully perform, as the law requires, all his duties relating to the collection and payment over all fines and forfeitures which may come into his hands by virtue of his office. Such bond shall be held by the county treasurer and enforced for the security of any and all parties entitled to such fines and forfeitures, and a suit on such bond for the benefit of one party shall not bar a suit thereon for the benefit of any other party."

Our Court, in the case of Howard v. Harrington, 114 Me., 446, said:

"The answer to the question before us does not necessarily depend upon constitutional or statutory provisions.

The doctrine of the incompatibility of offices is bedded in the common law, and is of great antiquity.

At common law two offices whose functions are inconsistent are regarded as incompatible.

The debatable question is, what constitutes incompatibility?

The question has been answered by the courts with varying language but generally with the same sense.

Two offices are incompatible when the holder cannot in every instance discharge the duties of each.

Incompatibility arises where the nature and duties of the two offices are such as to render it improper, from consideration of public policy, for one person to retain both.

Incompatibility between two offices exists when there is an inconsistency in the functions of the two.

The test of incompatibility is the character and relation of the offices as where the functions of the two offices are inherently inconsistent and repugnant."

In view of the foregoing, it is the opinion of this department that a Judge of a Municipal Court may not hold the office of County Treasurer.

Very respectfully yours,

Deputy Attorney General

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