

# MAINE STATE LEGISLATURE

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April 14, 1937

Thomas S. Bridges, Esquire  
County Attorney  
Calais, Maine

Dear Brother Bridges:

In response to your inquiry of April 9, I regret to have to inform you that I do not find that the exact question you ask has ever been passed on by the Court, consequently I would not want to be considered as giving you a definite opinion. I am, however, pleased to call your attention to Article IX, section 3 of the Constitution of Maine which provides that:

"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 Me. 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."

In an opinion written under date of April 8, 1924, by the Deputy Attorney General, in answer to the question raised as to the office of grand juror and deputy sheriff, the Deputy advised that:

"In my opinion the two offices of grand juror and deputy sheriff ought not to be held at the same time by the same person. A grand juror belongs to the judicial branch, while deputy sheriff should be considered a part of the executive department, and I have no doubt the two offices are incompatible. The general rule is that offices are incompatible when the duties of both cannot be exercised by the person holding them without interfering one with the other."

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On January 11, 1932, the Attorney General rules that, "the offices of sheriff and county commissioner are inconsistent with each other and the same person could not serve in both at the same time."

Our Court, in the case of Howard v. Harrington, 114 Me., 448, held that:

"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."

From the foregoing it seems to me that the offices you mention are incompatible.

I am sorry I cannot give you more definite information.

Very truly yours,

Sanford L. Fogg  
Deputy Attorney General

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