

MAINE STATE LEGISLATURE

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February 22, 1939

Roy Moore, Esquire
Box 202
Waterville, Maine

Dear Sir:

In response to your oral inquiry relative to your newly appointed Municipal Judge being able to hold the office he now holds as a Member of your School Committee after his qualification as Judge, I have to inform you that after carefully considering the same, it is our opinion that the two offices are incompatible.

Section 1 of Article III of the Constitution provides that: "The powers of this government shall be divided into three distinct departments, legislative, executive and judicial."

Section 2 provides that: "No person or persons belonging to one of these departments shall exercise any of the power belonging to either of the others,..."

Our Court in the case of Edward v. Harrington, 114 Me., 46, said: "Two offices are incompatible when the holder cannot in every instance discharge the duties of each."

While the Court has never definitely answered your question, I am satisfied that from the general rule laid down I could not give you any assurance that the newly appointed Judge can remain a member of the School Committee. The general rule is the acceptance of an incompatible office vacates the office already held.

Very truly yours,

Sanford L. Fogg
Deputy Attorney General

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