

# MAINE STATE LEGISLATURE

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July 23, 1941

Frank I. Cowan, Attorney General

Sumner Sewall, Governor of Maine

In re Office Building Commission - Judge  
Lauren M. Sanborn

I have been studying the Private and Special Laws of 1941, Chapter 76, and, with the assistance of Judge Fogg, have been going through the opinions of the Justices and the decisions of the Courts. As you say, it is eminently desirable that Judge Sanborn be on the Commission, but I am afraid that he can't accept the position without automatically vacating his office as Senator.

In 95 Maine, page 585, the question up was whether or not the office of Fish and Game Commissioner, and also the office of Trustee of any State Institution where the appointments thereto were made by the Governor or the Legislature, were State offices, and, so far as any compensation was affixed by law to those offices, they were "offices of profit under this State", within paragraph 11 of Article 4 of the Constitution which prohibits a person holding such offices from having a seat in either branch of the Legislature during his continuance in such office. The Court, in its opinion, ruled that the amount of compensation is immaterial and that if there was any compensation allowed, over and above sums allowed for expenses, the office is one of profit.

The question involved is whether or not the person appointed to the Building Commission exercises powers in directing the administration of a law of the State. The Court, in 95 Maine, uses this expression: "Each of such persons wields some part of the power of the State, however small, and in some sphere of State action, however limited".

There is a discussion of one phase of the subject in 124 Maine, page 14, which distinguishes between an "office" and an "employment".

The Building Commission is to exercise a great deal of authority and have large discretion. Section 6 empowers the employment of architects and authorizes the Commission to have plans prepared which must be subject to its approval. Section 7

*See July 28, 1941  
reversing  
this  
opinion  
F.C.*

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authorizes the Commission to select the location of the building, etc, and to select land owned by the State. Section 8 authorizes the Commission to select other land not owned by the State.

Unfortunate as I regard it to be, I am of the opinion that the appointment of Judge Sanborn to this Commission and his acceptance of compensation, will automatically vacate his office as State Senator.

Attorney General

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