

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

From:
The Attorney General's Office

December 11, 1941

To:
LeRoy Folsom, Assistant Attorney General
Counsel Dept. Health and Welfare

In answer to your recent inquiry as to whether the same person can hold the office of Sheriff and be a member of the Old Age Assistance Commission at the same time, I am pleased to inform you that both being a part of the same State department, viz., the Executive Department, there does not appear to be any constitutional prohibition as to a person holding both offices.

It has been held by our Courts that: "Two offices are incompatible where the holder cannot in every instance discharge the duties of each".

Incompatibility comes 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.

I am unable to find any case where the question of the incompatibility of the two offices mentioned has been passed upon by the Courts, but from all the information I can get, I can see no inherent inconsistency in the two offices, which would exclude a person from holding both under the general rules of law.

SANFORD L. FOGG
Deputy Attorney General

From:
The Attorney General

December 11, 1941

To:
Earle R. Hayes, Director Personnel

I have your memorandum of November 15th, in regard to payment of wages for "vacation earned but not taken prior to date of death" together with your memorandum of December 8th, explaining the meaning of the expression.

My understanding of the vacation rule is that it is for the benefit of the State, the theory being that an employee is of more value if he takes a vacation from his regular labors.

The only employees of the State that I know of to whom the question you have asked can apply are employees who are on a weekly basis. If they were on an annual basis and were receiving 52 weeks pay for 50 weeks work I am inclined to think that, inasmuch as the time of taking the vacation is indefinite, the proper procedure would be to credit 1/14 of the allowable vacation period against 1/14 of the year so that the employee would be rated as accumulating vacation pay. In such case, if the employee died during the year, it would seem proper to allow to his estate so many 1/14s of his two weeks vacation pay as he had accumulated.