

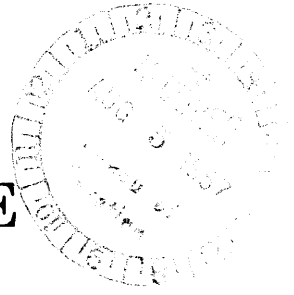
MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT
OF THE
ATTORNEY GENERAL

for the calendar years
1955 - 1956

OPINIONS

January 3, 1955

To Honorable Carroll Peacock

Re: Compatibility

Your inquiry relative to your right to continue as a Commissioner on the Atlantic States Marine Fisheries Commission after your acceptance of the office of Governor's Councilor has been received.

The Constitution of Maine, Article V, Part Second, Section 4, provides as follows:

"Persons disqualified; not to be appointed to any office.—No member of Congress, or of the legislature of this state, nor any person holding any office under the United States, (post officers excepted) nor any civil officers under this state (justices of the peace and notaries public excepted) shall be counsellors. And no counsellor shall be appointed to any office during the time, for which he shall have been elected."

It is the opinion of this office that the position of Commissioner on the above-mentioned Commission is a civil office within the meaning of the Constitution of the State of Maine and specifically the section above quoted. Therefore by your acceptance of the position of Governor's Councilor you will automatically vacate the office of Commissioner on the Atlantic States Marine Fisheries Commission.

ROGER A. PUTNAM
Assistant Attorney General

January 4, 1955

To Robert L. Dow, Director of Marine Research

Re: Seed Quahogs

We have at hand your memo in which you inquire as to the legal responsibilities of the Commissioner of Sea and Shore Fisheries in granting permits for the handling of seed quahogs and the utilization of seed quahogs in Maine flats. The question is raised because of the existence of a provision in Section 90 of Chapter 34 of the Revised Statutes, following a determination of the legal size of quahogs and clams:

"Provided, however, it shall not be unlawful to take seed quahogs or seed clams or have the same in possession under the authority of a permit therefor, which the commissioner is hereby authorized to grant, for replanting in waters or flats within the state or for any other purpose."

With respect to this law you ask three questions:

"1. Is granting Mr. X a permit by the Commissioner discretionary or mandatory?"

Answer. Unquestionably, as seen in several provisions of the law, the legislature contemplated that under certain conditions it would be permissible for a person to have seed quahogs or seed clams. The authority is placed in the Commissioner for issuing a permit for that purpose. It would seem to us that after the