

# MAINE STATE LEGISLATURE

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STATE OF MAINE



REPORT  
OF THE  
ATTORNEY GENERAL

for the calendar years  
1955 - 1956

April 12, 1956

To George F. Mahoney, Insurance Commissioner

Re: Compatibility of Certain Employments and Offices

. . . The propriety of the appointment of certain employees of your department to various positions outside State employment is questioned.

Among the positions accepted by Insurance personnel are bail commissioner, deputy sheriff in two counties, and member of a school committee. The question was asked if the holding of such positions was compatible with their positions in your department.

Aside from express provisions in the Constitution or statutes where it is stated that certain offices are incompatible, there is common-law incompatibility, to the effect 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.”

No facts come immediately to our minds as to the incompatibility of the offices mentioned above except as to bail commissioner; but we would consider that such questions could be determined in your office as a matter of policy, particularly where such outside position interfered with the performance of the State employee's duties.

With respect to bail commissioner, it is our opinion that such office is incompatible with that of law enforcement officers. A bail commissioner must be a justice of the peace and our court has held that the offices of constable or deputy sheriff and justice of the peace are incompatible. *Pooler v. Reed*, 73 Me. 129.

JAMES G. FROST  
Deputy Attorney General

April 12, 1956

To Richard E. Reed, Executive Secretary, Maine Sardine Industry

Re: Sardine Canning License

In your memo of April 4, 1956 you refer to two sections of our law which require in each instance a separate license which must be obtained by a sardine canner:

1. Section 111, Chapter 38, R. S. 1954 (Wholesale Sea Food Dealer's and Processor's License, to be obtained from the Department of Sea and Shore Fisheries), and
2. Section 258, Chapter 32, R. S. 1954 (Sardine Packer's License, to be obtained from the Department of Agriculture).

You further state that certain of the sardine canners complain that this dual licensing is unfair and is an unnecessary tax for the privilege of conducting a business enterprise. As a result of the canners' complaint you ask for an opinion as to whether the licensing requirement of the Department of Sea and Shore Fisheries must be complied with if they wish to operate during the coming season.