

# MAINE STATE LEGISLATURE

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November 10, 1956

no

To Honorable Edmund S. Muskie, Governor of Maine  
Re: Compatibility of Office

We have your memo of October 25, 1956, in which you stated that a voter in Washington County has drawn to your attention the fact that the sheriff of Washington County was duly appointed a Justice of the Peace by the Governor and Council.

The sheriff was duly elected as such and began his term of office on January 1, 1955, for a two-year period. His appointment as Justice of the Peace was during the summer of 1956.

You asked what effect the appointment as Justice of the Peace has upon the office of sheriff and what, if any, responsibility you have as a result of such appointment of the sheriff as a Justice of the Peace.

In considering this problem it is of interest to note that the same person is sheriff-elect of Washington County and will begin his new office on January 1, 1957.

It has been held, and we believe it to be still the law, that the offices of Deputy Sheriff and Constable or Justice are incompatible. In the case of a person's accepting an office which is incompatible with an office which he was holding at the time he accepted the subsequent incompatible office, the law in Maine is that he vacates the prior office.

We are of the opinion, however, in the case of a sheriff's accepting an incompatible office, that such sheriff would be a de facto officer, so that his acts as sheriff, performed in the course of his duties, would be upheld as legal acts.

Because of the fact that the present sheriff of Washington County is also the sheriff-elect and that he will enter upon his new term in less than two months, we are of the opinion that steps to clarify the situation cannot be taken within that time. Any action initiated by this office, in the nature of quo warranto to test title to his office, could not be successfully terminated within that time.

It would therefore be our recommendation that the condition be permitted to continue undisturbed. We would add that the determination of whether or not a vacancy exists under the circumstances is a judicial determination.

A determination by the Governor and Council that a vacancy exists followed by an appointment to fill that vacancy would be subject to court review.

James Glynn Frost  
Deputy Attorney General

Roger A. Putnam, Assistant