

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1959 - 1960**

MAINE STATE  
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the opinion of the Board, the expenditures for education in such unit show evidence of manipulation to gain an unfair advantage or are adjudged excessive.”

Section 31, Chapter 41, provides that funds may be withheld by order of the Governor and Council from administrative units that have failed to expend school money received from the state or in any way failed to comply with the law governing the duties of administrative units.

One of your duties as Commissioner of Education is to apportion subsidies to administrative units. Section 237-D, Chapter 41, sets forth the elements to be used in determining the foundation program allowance. One of these elements is pupil transportation. Before you can properly execute your statutory duty of computing the foundation program allowance, you must know the amount of money the administrative unit has allocated and expended for public pupil transportation. If you have information that any of the figures supplied are in error, I believe you may require substantiating information to enable you to properly perform the duties required of you. In addition to this, you may recommend an adjustment pursuant to the procedure set forth in Section 237-A, Chapter 41.

Your basic query is how an adjustment shall be made to conform to the law. There is no statutory provision for an adjustment of monies expended by an administrative unit for an unauthorized purpose. Such monies cannot be included in your computation for the foundation program allowance. Your concern is limited to money expended for public school transportation. If sufficient evidence cannot be presented to you of the amounts spent for this purpose, you cannot include these monies in your computations for subsidy.

GEORGE A. WATHEN  
Assistant Attorney General

March 18, 1960

To: Honorable Dwight A. Brown  
68 Main Street  
Ellsworth, Maine

Dear Mr. Brown:

I have your question regarding your desire to run for the unexpired term of senator in your county while serving in the House of Representatives.

It is my understanding that your question is whether or not you can, if elected, continue your duties as a representative until you qualify for the senatorial seat.

There are certain basic rules concerning incompatibility of offices which I feel would apply to this situation. The two offices are incompatible and both cannot be retained as pointed out in *Stubbs v. Lee*, 64 Me. 195, when one accepts an office incompatible with the first, he, therefore, relinquishes the former. *Howard v. Harrington*, 114 Me. 443.

One may run for election to an office incompatible with one which he holds if there is no statutory or constitutional prohibition. I was unable to find such prohibition in this case. If one accepts the second incompatible office, it will constitute an abandonment of the other. I note that in Chapter 4, Sections 52-54 of the Revised Statutes of 1954, a candidate must accept the nomination in writing and agree not to withdraw before the date of election. He also agrees, if elected, to qualify as to such office. This is a statement of intent and is an indication to his constituents of what he will do in the future.

If a man is elected to an office which is incompatible with the one which he holds, he must choose the office he wishes to hold. In *Lesieur v. Lausier*, 148 Me. 500, the court enunciated the rule that when one serves in his first incompatible office beyond the time that he should have qualified for the second office, he impliedly waives his right to the second office. Therefore, applying these rules to your situation, I believe you may run for the unexpired term and continue to exercise your powers and duties as a representative unless a special session of the 99th Legislature is called. In the event of a special session, you would be required to choose the office of Senator or that of Representative. It would seem that there would be no question of the choice, but at that time your choice would be final. It is interesting to note that the same fact situation occurred in 1951 in which a representative was elected to serve the unexpired term of a senator and continued acting on House Committees after being elected Senator but prior to qualification as such.

If there are any more questions concerning this, I would be happy to attempt to give you an answer to them.

Very truly yours,

GEORGE A. WATHEN  
Assistant Attorney General

March 18, 1960

To: Robert S. Linnell, Esquire  
192 Middle Street  
Portland, Maine

Dear Bob:

I have your letter of March 4, 1960 in which you ask if the committee established under the provisions of Chapter 149, Private and Special Laws of 1959, has the authority to proceed so far as to execute an option for the purchase of land.

For the reasons hereinafter set forth we believe the committee had the authority to execute an option.