

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1959 - 1960

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I have reviewed the opinions compiled in this office regarding the incompatibility of holding an office in more than one branch of the State Government and am of the opinion that the two offices would be incompatible.

GEORGE A. WATHEN
Assistant Attorney General

December 23, 1960

To: E. L. Newdick, Commissioner of Agriculture

Re: Airplane Insurance for our Marketing Specialists

We have your letter of November 23, 1960 in which you inquire as to the legality of the Maine Potato Commission's paying for a group flight policy for those employees of your department doing work servicing and promoting Maine potato advertising.

We are of the opinion that flight insurance would be a proper expenditure of funds and could appropriately be paid by the Maine Potato Commission under its agreement with you for servicing and promoting Maine potato advertising. However, authority for the purchase of such insurance should be obtained from the Governor and Council.

It has long been the policy of the state that the Governor and Council authorize the procurement of insurance both on State property and other forms of insurance. For this reason we believe a Council Order should be prepared for presentation to the Governor and Council with respect to this problem.

JAMES GLYNN FROST
Deputy Attorney General

December 23, 1960

Mr. Harold Dow
Eliot, Maine

Dear Harold:

This is regarding your oral request for an opinion as to whether or not you, as a member of the Interstate Bridge Authority, could also be elected and serve as a Governor's Counsellor.

As you know by the Act creating the Interstate Bridge Authority, the Governor with the advice and consent of the Council, appoints members of the Authority. It is further provided that members may be removed by the Governor and Council for cause. These facts alone, in my opinion, create a conflict between the two offices.

I might add further that the term "civil officer under this state" as used in Article V, Part Second, Section 4 of the Maine Constitution would embrace a member of the Interstate Bridge Authority. The office is created, the powers given, and the duties defined directly by act of the legislature.

Such members exercise a share of the powers of civil government and obtain their authority directly from the State. The emoluments of the office are not a necessary element in determining its character. For this reason it is my opinion that you would have to resign as a member of the Bridge Authority before being elected to the Council since the Constitution reads:

“Section 4. 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 . . . shall be counsellors. . . .*”

The answer to your question, therefore, must be no.

Very truly yours,

FRANK E. HANCOCK
Attorney General

December 27, 1960

To: Carleton L. Bradbury, Commissioner of Banks and Banking

Re: Servicing Agreement for Mortgages on Property in North Carolina

With respect to the legality of the Maine State Retirement System's purchase of mortgages on property in North Carolina, we offer the following:

Intangible Property Tax and Income Tax in
North Carolina

With respect to the intangible property tax levied in the State of North Carolina, section 105-212 of the General Statutes of North Carolina set forth the institutions exempted from such tax.

“105-212. Institutions exempted; conditional and other exemptions.—None of the taxes levied in this article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor, on or after January first, one thousand nine hundred and forty-two, to any funds, evidences of debt, or securities held irrevocably in pension, profit sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the provisions of section 105-138, subdivision (10); . . .”

Referring to section 105-138 subdivision (10) we find therein those organizations which shall be exempt from income tax.