

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

June 29, 1961

To: Edward Langlois, General Manager
Maine Port Authority
Maine State Pier
Portland, Maine

Dear Mr. Langlois:

In answer to your letter of June 26th, you are correct in stating that L. D. 1633 (now Chapter 217, P & S Laws of 1961) cannot take effect until September 16, 1961, ninety days after the recess of the Legislature (Constitution of Maine, Article IV, Part Third, § 16). In theory, the matter could be put to referendum within that ninety-day period and defeated by a vote of the people.

There is nothing to prevent you from making a request of the Governor and Council for a sum of money from the contingent fund to allow you to provide adequate service to Long Island Plantation until the specific appropriation is available in September. The Governor and Council legally may make such funds available.

In answer to Mr. Thompson's question submitted in his letter of June 27th to this office, we agree that L. D. 1633 is not an amendment to Chapter 190 relating to Penobscot Ferry Service. It is simply an appropriation and a direction by the Legislature to the Authority to provide service for the next two fiscal years to Long Island Plantation. The Department of Accounts and Control will set up, after September 16th, a Long Island Plantation activity account within the Maine Ferry Service Account. Only \$12,000 will be available and can be expended on that activity in each of the next two fiscal years. This is a bookkeeping transaction but in effect is a separate and distinct fund.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 30, 1961

Lee Ricker, Trial Justice
Eustis
Maine

Dear Mr. Ricker:

Recently this office was asked informally if the holding of the positions of Trial Justice and Selectman of a town were incompatible. I checked into the matter and found that on several occasions this office has ruled that such offices are incompatible.

This opinion is based on a Maine case, *Howard v. Harrington*, 114 Me. 443. In that particular case the law court held that the office of Mayor and Judge of the Municipal Police Court were incompatible because the Mayor was charged with the responsibility of enforcing certain laws and city ordinances. The same laws required that any violations be brought before the police court.

This meant that the Mayor had to act as prosecutor and judge, which of course cannot be done. By analogy it would appear that the same reasoning would apply to the office of Selectman and Trial Justice. There are certain laws which require the municipal officers to be the enforcing agency, at the same time giving a Trial Justice exclusive or concurrent jurisdiction with municipal courts. Thus, you are charged with enforcing certain laws in your capacity as Selectman and at the same time required to judge the guilt or innocence of a person whom you must be charging with a violation.

This same case states that the acceptance of the second office automatically vacates the first office. I do not know in what order you accepted these two positions. It does seem to me, however, that if it is true that you are currently a Selectman of Eustis, that the acceptance of this office at the recent town meeting would have vacated the office of Trial Justice which you accepted in November 1958. However, I am only advising you on this matter and my opinion does not have the force of law. The only way this matter can be decided is by bringing the matter to the attention of the proper court in a proper action.

I felt it advisable, however, to write to you about this because you may assume to act as a Trial Justice and possibly place a man in jail when it might be entirely possible that you did not have the authority which you would be assuming. I would suggest very strongly that you talk with your attorney about this matter, solely as a protection to yourself personally.

Very truly yours,

GEORGE C. WEST

Deputy Attorney General

July 10, 1961

To: Doris M. St. Pierre, Secretary of Real Estate Commission

Re: Personnel Bulletin #1151 "Right of Way Appraiser"

This is in answer to your memorandum of June 14, 1961.

As I understand it, the Personnel Department has issued a bulletin on the qualifications of a State Right of Way Appraiser and one of the qualifications is the possession of a broker's certificate of registration issued by the Maine Real Estate Commission.

The Commission does not want to issue a license to the broker since he will not have a place of business for a private broker's practice but they agree to cooperate with the Personnel Board in giving broker's examinations and notifying the Personnel Board when an applicant has passed the broker's examination.

This procedure is within the power of the Commission but I would suggest that when the applicant takes the examination that he be informed that the only reason for giving the examination in that particular case is for a determination of his qualifications as a Right of Way Appraiser and not for the issuance of a real estate broker's license.

RICHARD A. FOLEY

Assistant Attorney General