

MAINE STATE LEGISLATURE

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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

GCW:H

Evans - Trial Justice
Lee Ricker - Selectman } write him.
6/30/61

10-16-47

1-15-48

2-2-48

3-17-53

8-31-53

Howard v. Harrington
114 Me 443

Mayor & judge of police et.