

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

Inasmuch as the type of plate issued and the manner and method of displaying such plates is regulated by the commission, we see no reason why the commission cannot amend its regulations to provide for issuance of floater plates to interstate carriers.

GEORGE C. WEST

Deputy Attorney General

January 23, 1962

To: Ober C. Vaughan, Director of Personnel

Re: State Employee as political candidate

We have your request for an opinion with regard to whether or not State employees can be members of the State Legislature if granted leaves of absence in order to attend the sessions of that legislature. We understand that your original request for an opinion would involve a determination of whether any State employee could ever run for an elective office. As this question must be determined on an individual basis, we are limiting our opinion to the situation to which a State employee desires to run for the State Legislature.

We would call your attention to an opinion issued by this office on May 29, 1956 to the effect that no State employee, as a member of the executive branch of State government, could carry out the duties of a member of the legislature and that no State employee could be given leave to attend the annual session of the legislature or any special session thereof. We have examined this question anew, but can find no reason why this opinion should be altered.

It is, therefore, our opinion that no State employee can run for or be elected to the State Legislature whether or not he has been granted a leave of absence by his department.

THOMAS W. TAVENNER

Assistant Attorney General

January 29, 1962

To: Steven D. Shaw, Administrative Assistant, Executive Department

Re: Incompatibility of Office

We have your request of January 6, 1962, for our opinion as to whether a member of the State Board of Examiners of Funeral Directors and Embalmers could at the same time hold the office of member of the Governor's Executive Council.

The Constitution of Maine, Article V, Part Second, Section 4, provides as follows:

“Persons disqualified. Not to be appointed to any office.”

“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 (justices of the peace and notaries public excepted) shall be counsellors. And no

counsellor shall be appointed to any office during the time, for which he shall have been elected.”

It is the opinion of this office that the position of member of the State Board of Examiners and Funeral Directors and Embalmers is a civil office within the meaning of the above constitutional provision. For this reason, this office is incompatible with the office of executive counsellor and the same person cannot constitutionally hold both offices at the same time.

THOMAS W. TAVENNER

Assistant Attorney General

January 30, 1962

To: Philip R. Gingrow, Examiner, Banks and Banking

Re: Issuance of Small Loan License to Superior Finance Co.

Since my memo of January 17th you have furnished information concerning the Superior Finance Co. This information would indicate that the Superior Finance Co. did commence actual business under its charter within two years from the effective date of the legislature granting the charter.

It is a well recognized principle of law that the courts frown upon forfeitures of corporate franchises. The main object is to preserve a charter, not destroy it, and it should be preserved unless there is a plain abuse of power by which the corporation fails and wilfully neglects to fulfill the design and purposes of its organization.

This corporation was organized in 1959, has held several meetings, has borrowed \$600, has purchased a corporate seal and corporate records books.

It would appear, therefore, that the corporation did commence business within the two-year period.

GEORGE C. WEST

Deputy Attorney General

January 31, 1962

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

Re: Meaning of “Fixed and Definite Place of Business”

This is in answer to your request for an opinion inquiring whether there is any conflict between the requirement of Section 7 of Chapter 84, Revised Statutes of 1954, that every real estate broker “shall maintain a fixed and definite place of business in this state” and the definition of a real estate broker under Section 2, paragraph I, as any person “who . . . sells . . . real estate . . . as a whole or partial vocation.”

It is my opinion that the above requirements do not conflict. A real estate broker may elect to sell real estate on a part time basis. The provision that the broker must maintain a fixed and definite place of business does not require that the place of business be open to the general public during regular business hours.