

MAINE STATE LEGISLATURE

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July 24, 1967

Attorney General Erwin

Leon V. Walker, Jr., Assistant

Incompatibility of Office

You have been asked whether or not it is compatible for a member of the Legislature to be employed at the same time on the administrative staff of the University of Maine.

M.R.S.A., Const., Art. III, § 1, provides that the powers of the government shall be divided into three distinct departments; the legislative, executive and judicial. Article III, § 2, provides that no person belonging to one of these departments shall exercise any of the powers properly belonging to either of the others. Article IV, Part 3, § 11, provides that no person holding an office of profit under the State shall have a seat in either House.

20 M.R.S.A., § 2252, declares the University of Maine to be an instrumentality and agency of the State for the purpose for which it was established. The University's employees must, therefore, be State employees; although they are not members of the classified service, and are hired directly by the University. A legislator employed by the University would, then, be holding incompatible offices under both the Constitutional limitations above cited.

The following opinions of the Attorney General support this view:

Commissioner of Inland Fisheries and Game and member of Legislature: Held incompatible - Opinion of January 8, 1960.

Classified employee and member of Legislature: Held incompatible - Opinion of March 8, 1962.

Legal adviser to Portland Pier Directors and member of Legislature: Held incompatible - Opinion of December 8, 1960.

Member of Real Estate Commission and member of Legislature: Held incompatible - Opinion of February 21, 1951.

Employee of Executive Department and member of Legislature:
Held incompatible - Opinion of May 29, 1956.

Chairman of Potato Commission and member of Legislature:
Held incompatible - Opinion of February 21, 1967.

Sea & Shore Fisheries Warden and member of Legislature:
Held incompatible - Opinion of February 11, 1932.

LVWJr:H.