

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

January 23, 1968

Honorable L. Robert Porteous  
Chairman, Executive Council  
State House  
Augusta, Maine

Re: Governor's Appointment of Gorham State College  
Instructor to the State Board of Education.

Dear Mr. Porteous:

You have asked whether the Governor's posting of a Gorham State College instructor to the State Board of Education may result in a conflict of interest if confirmed by the Council. The Governor's appointment of the instructor to the Board was made pursuant to 20 M.R.S.A. § 51. However, we must not overlook the provisions of 20 M.R.S.A. § 2305.

"The state colleges shall be under the direction of the state board. Said board shall have charge of the general interests of said colleges; shall see that the affairs thereof are conducted as required by law and by such by-laws as the board adopts; employ teachers and lecturers for the same; and shall have authority, by and with the consent of the Governor and Council, to dispose of and acquire property for the improvement of the plants and grounds; and biennially render to the Governor and Council an accurate account of the receipts and expenditures for the biennium preceding, including same as a part of the commissioner's report. The clerical and staff services for this board shall be performed by the employees of the department under the direction of the commissioner. The head of a state college shall be designated as a president."

Note that the State Board of Education is charged with the management of the affairs of these state colleges, even to the extent that the Board employs the teachers and lecturers for these State Colleges. If the appointment is realized, an 'employee' of the Board becomes a Board member; a situation which violates the common law doctrine of incompatibility of offices as expressed in Howard v. Board of Education, 114 Mo. 443 96 A. 769.

For the reasons stated herein, we respectfully conclude that confirmation of the given appointment would result in a conflict of interest.

Very truly yours,

John W. Benoit  
Assistant Attorney General

JWB/eh