

# MAINE STATE LEGISLATURE

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February 5, 1968

R. C. Blake, Sr.  
County Treasurer  
Hancock County  
Ellsworth, Maine

Dear Mr. Blake:

In answer to your letter of January 30, we have arrived at the conclusion that the offices of County Treasurer and a member of the Board of Selectmen of a town within said county are incompatible. This is not to be considered an official opinion of the Attorney General's office. Rather, it is an unofficial answer to your inquiry.

At this point, it might be well to advise you that there is no constitutional or statutory prohibition in the State of Maine from holding these two offices. The incompatibility which does arise finds its origins in the common law.

In the case of Howard v Harrington 114 Me. 443 (1916) the Law Court of the State of Maine discusses at some length the problem of incompatibility as it has evolved from the common law. The Court begins by saying that "two offices whose functions are inconsistent are regarded as incompatible." Citing from other cases, the Court continues: "two offices are incompatible when the holder cannot in every instance discharge the duties of each." "incompatibility must be such as arises from the nature of the duties, in view of the relation of the two offices to each other." "the functions of the two must be inconsistent as where an antagonism would result in the attempt by one person to discharge the duties of both offices." "the true test is whether the two offices are inconsistent in their natures, in the rights, duties or obligations connected with or flowing out of them."

A cursory examination of Title 30 of the Maine Revised Statutes of 1964 reveals that such inconsistency could develop. For example, under 30 M.R.S.A. § 254 county tax is apportioned upon the towns. Under 30 M.R.S.A. § 751 the County Treasurer may enforce payment of taxes. It is clear that if one man were County Treasurer and a member of the Board of Selectmen of a town within said county, the possibility for a conflict of interest is great. Were there any disagreement as to whether or not the tax was correct which governmental unit would such an individual support?

I hope this will answer your question. I must again emphasize that this is an unofficial answer.

Very truly yours,

Warren E. Winslow, Jr.  
Assistant Attorney General

WEW, Jr./mf