

MAINE STATE LEGISLATURE

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April 4, 1968

Frank B. Walker, Esquire
City Attorney
Ellsworth, Maine

Dear Frank:

This will acknowledge receipt of your letter of March 27 and will confirm our conversation of April 3. You have asked this office for an opinion on the compatibility of the offices of county commissioner and a member of the city council.

There is no statutory or constitutional provision that clearly states that these two offices are incompatible. There is 30 M.R.S.A. § 51, which provides that a person may not be a county commissioner and a mayor or assessor of a city; or a selectman or assessor of a town at the same time. Although a member of the city council may, at times, act in the capacity of a municipal officer as does a selectman, I do not believe that a selectman and a member of the city council are synonymous. Basically, the city council is the legislative body of the city. The board of selectmen is not the legislative body of the town.

I do find some provisions in our statutes that would indicate there could be a conflict of interest between the two positions. I would refer you to 29 M.R.S.A. § 902. In the second paragraph it provides that county commissioners may make certain designations on ways and bridges and impose restrictions on vehicles passing over the same. It further provides that the municipal officers of each municipality within their respective municipalities shall have the same power as the chief and members of the State Police in the enforcement of the above section, and all rules and regulations promulgated by the State Highway Commission, the county commissioners and the municipal officers. This would seem to place

an individual (as a county commissioner and a member of a city council) in the position of making regulations and imposing restrictions in his capacity as a county commissioner and then enforcing those provisions as a municipal officer. It would appear that this would create a conflict of interest such as was stated in Howard v. Harrington, 114 Me. 443.

I also found some sections dealing with highways in 23 M.R.S.A. in which there could be a conflict of interest. Section 2101 provides for a petition by the municipal officers to the county commissioners under certain circumstances. Section 3006 provides that a petitioner who cannot obtain satisfaction of a certain type from the municipal officers may present a petition to the commissioners of the county. Section 3008 is very similar, whereby a party aggrieved as the result of inaction by a town may petition the county commissioners.

There may be other instances in the statutes. I have not checked everything. It would appear from all the above that the positions of county commissioner and member of a city council would be ones in which there could be a conflict of interest and, hence, possible that the member of the city council who has accepted the office of county commissioner would have vacated the office of city councillor. See Howard v. Harrington cited above.

Very truly yours,

George C. West
Deputy Attorney General

GCW:H