

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Turning to § 703 subsection 1, before 1965 it read as follows:

““Cost of project” shall mean the cost or fair market value of *construction*, lands, property rights, easement, franchises, financing charges, interest, engineering and legal services, plans, specifications, surveys, cost estimates, studies and other expenses as may be necessary or incident to the development, construction, financing and placing in operation of an industrial project.” (Emphasis supplied)

In 1965 it was amended as follows:

““Cost of project” shall mean the cost or fair market value of *real estate improvements*, lands, new machinery and equipment including installation thereof, used machinery and equipment, property rights, easement, franchises, financing charges, interest, engineering and legal services, plans, specifications, surveys, cost estimates, studies and other expenses as may be necessary or incident to the development, construction, financing and placing in operation of an industrial project.” (Emphasis supplied)

The words “real estate improvements” were substituted for “Construction” making § 703 consistent with § 702 by implying that new industry or new buildings are not requirements under the Act.

It is clear from a reading of these sections, and the 1965 amendments thereto, that the legislature envisioned refinancing of existing industry in the State as part of the overall scope of the Act.

Extensive changes in the Act were made by P. L. 1967 c. 525, none of which affect the reasoning or results in the preceding paragraphs.

WARREN E. WINSLOW, JR.
Assistant Attorney General

May 15, 1968
Education

Asa A. Gordon, Director, School Admin. Services

Compatibility of School Director’s Office and Selectman’s Office.

SYLLABUS:

Incompatibility of offices results when school administrative district director also holds office of selectman of member town.

FACTS:

Past opinions of the Office of the Attorney General have issued with conclusions that the Office of Selectman and the Office of School Committee member are incompatible. See opinions dated May 1, 15, 1936; April 18, 1942; and March 24, 1955.

A school administrative district director has inquired of the Department of Education whether he may hold the director’s position together with the position of selectman of one of the towns which is a member of the school administrative district.

QUESTION:

May a person who holds the position of school administrative district director also

serve as a selectman in a member town of the district sans incompatibility resulting?

ANSWER:

No.

REASON:

The Maine Statutes contain provisions evidencing a legislative intention that school administrative district directors not be, simultaneously, selectmen of a member town of the district. For example, 20 M.R.S.A. § 222 recites provisions for the dissolution of a school administrative district. Note that the district directors and the selectmen meet for the purpose of the preparation of a dissolution agreement. It seems inequitable that a director be required to represent both the district and his town relative to any such dissolution agreement. Too, the same section also contains language establishing procedures for the recounting of ballots cast in a district dissolution vote. The law authorizes the municipal officers of any participating municipality to request a recount of district votes; and the board of directors is charged with the authority to resolve any question regarding disputed ballots. If a district director holds the office of selectman of a member town, he may, on the one hand, be a member of the town council advancing a dispute as to ballots; and, on the other hand, he may be a member of the very board charged with the decision of disposing of such disputed ballots. Continuing, it is noted that 20 M.R.S.A. § 302 vests the selectmen or municipal officers of a member municipality with the obligation of filling certain vacancies created on the board of directors. Surely, incompatibility would result in the event that a board of selectmen were to appoint one of their own members to the district's board. The statute, on this point, requires that the selectmen elect "a director from the municipality". There is no authority for the selectmen to elect one of their members to the board. Of course, this hypothetical situation is not dispositive of the question; but the tenor of the law is expressed.

Our position (that a selectman may not at the same time be a school administrative district director) concurs with the earlier expressions of this office issued on similar facts, i.e., that a selectman may not simultaneously hold the office of school committee member. The tenor of the several sections of the statutes relating to public education is that incompatibility results from a merger of the offices of selectman and school administrative district director in one person.

JOHN W. BENOIT
Assistant Attorney General

May 22, 1968
Attorney General

James S. Erwin, Attorney General

Power of Executive Councillor to Contract with State College.

SYLLABUS:

Since by statute the state colleges are now part of the University of Maine, which is not a State-owned or operated institution, contracts between such colleges and state