STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

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.

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May 22, 1968
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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

officials are no longer void by virtue of 17 M.R.S.A. § 3104 (1964). However, since the Executive Council exercises a degree of supervision and control over the University, a Councillor acts in manner incompatible with his office if he elects to so contract.

FACTS:

A member of the Executive Council is the president and majority stockholder in a corporation holding an automobile sales franchise. The corporation has been requested, as have other auto dealers, to submit a price quotation for a vehicle to be used by Farmington State College of the University of Maine.

QUESTION:

May a corporation in which a member of the Executive Council holds an interest validly contract with the University of Maine or a branch thereof?

ANSWER:

No. The making of such a contract is incompatible with the office of Executive Councillor.

OPINION:

Such a contract would not be void under 17 M.R.S.A. § 3104 (1964) which in pertinent part provides:

> "No . . . person holding a place of trust in any state office . . . shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the State . . ., and any contract made in violation hereof is void."

It does not need to be asserted that a member of the Executive Council is, necessarily, "a person holding a place of trust in (a) state office." Cf. *Opinion of the Justices,* 108 Me. 545, 549, 82 Atl. 90, 91 (1911). It is equally apparent that the honorable Councillor would be indirectly pecuniarily interested in the contract for the vehicle, if such contract were awarded to the corporation in which he holds shares.

However, Farmington State College, though formerly operated wholly by the State [for the legislative history surrounding the establishment and operation of the state colleges, see *Inhabitants of Orono v. Sigma Alpha Epsilon Society,* 105 Me. 214, 219, 74 Atl. 19, 20 (1909)], became by statute part of the University of Maine on April 26, 1968. *See* Me. Priv. & Spec. Laws 1968, ch. 229. The University of Maine has been declared by the legislature to be an "agency of the State", 20 M.R.S.A. § 2251 (1964); but such agency extends, apparently, only to assumption of the burden placed on the legislature by Me. Const., Art. VIII to encourage and provide for education. *Cf.* 1963-64 Att'y Gen'l Rep. 193. The unique status of the University of Maine in this regard was recognized in *Inhabitants of Orono v. Sigma Alpha Epsilon Society, supra,* where it was said:

> "The University of Maine, while chartered by the State and fostered by it, especially in recent years, is not a branch of the State's educational system nor an agency nor an instrumentality of the State, but a corporation, a legal entity wholly separate and apart from the State." 105 Me. 214, 219, 74 Atl. 19, 21.

We conclude that any contract made by Farmington State College of the University of Maine after the effective date of Me. Priv. & Spec. Laws 1968, ch. 229, is not a "contract made in behalf of the State" within the meaning of 17 M.R.S.A. § 3104

(1964). Therefore, a state official may be a party to the contract without incurring the penalties of the statute.

However, the Executive Council may be called upon to approve an emergency appropriation for the University, to confirm its trustees, or to take some other action affecting the rights and interests of that institution. It would appear, then, on common-law principles, that for a Councillor to contract with the University, even on a bid basis as here, would to some extent jeopardize the arm's-length disinterested relationship called for when making a decision in his capacity as Councillor regarding the University. The role of contractor with the University would, therefore, conflict with the duties of an Executive Councillor. *Cf. Howard v. Harrington,* 114 Me. 443 (1916).

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May 23, 1968
Water and Air Environmental
Improvement Commission

Robert H. Smith, Sanitary Engineer

Transferability of Waste Discharge Licenses.

SYLLABUS:

The privileges of a waste discharge license issued to a corporation under 38 M.R.S.A. § 414 (1964) accrue only to that corporation, and upon acquisition of the licensee corporation by another corporation, or upon sale to another corporation of the facility which is the source of the licensed effluent, the license is extinguished and does not pass to the successor corporation either by operation of law or by a purported assignment.

FACTS:

In 1960 corporation X applied for and was granted a license by the Water and Air Environmental Improvement Commission to discharge wastes. In 1964, corporation X was acquired by corporation Y. In 1967, corporation Y sold to corporation Z the plant from whence came the discharge. No application for discharge license has ever been made to the Commission by corporations Y or Z.

QUESTIONS:

1. Where a corporation previously granted a waste discharge license is acquired by another corporation, does the acquiring corporation succeed by operation of law, or may it succeed by assignment, to the privileges conferred by the license?
2. Where a corporation previously granted a waste discharge license sells to another corporation the facility from which the licensed discharge emanates, do the privileges conferred by the license pass to the buyer corporation either by operation of law or by a provision in the terms of the sale that such privileges shall pass?

ANSWERS:

No, to both questions.