

MAINE STATE LEGISLATURE

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August 15, 1968

Cyril M. Joly, Jr., Esquire
Republican State Headquarters
187 State Street
Augusta, Maine 04330

Dear Cyril:

By letter of July 26 you asked me to direct my attention to a ruling by a former Attorney General that deputy sheriffs may not be Notaries Public or Justices of the Peace.

As you know, I may not give opinions of law to private clubs or individuals. I can, and do, however, point out to you that this matter has been settled by the Supreme Judicial Court a long time ago. In the Opinion of the Justices, 3 Me. 484, the incompatibility has been outlined with respect to Justices of the Peace.

I also enclose for your information a copy of a letter dated February 12, 1942 from Attorney General Cowan to County Attorney Whalen. This office has consistently taken the view that since the powers of the Justices of the Peace and Notaries Public are almost similar, the same incompatibility inheres to both offices.

Sincerely yours,

James S. Erwin
Attorney General

JSE:m
Enclosure

June 17, 1942

Fred W. Rock, Esquire
Attorney at Law
Presquo Isle
Maine

Dear Sir:

In reply to your letter of June 15th, 1942, it seems best to quote to you a statement which was made by Chief Justice Sturgis:

"There seems to be no doubt that there is incompatibility between the office of deputy sheriff and a Justice of the Peace. Opinions of the Justices, 3 Me. 484; Bamford v. Kolvin, 7 Me. 14; Stubbs v. Lee, 64 Me. 195; Pooler v. Reed, 73 Me. 129; Howard v. Harrington, 114 Me. 443-445. Although the rule has not been applied expressly to Notary Publics their express statutory authority to act as Justices gives much ground for questioning their ability to act after acceptance of an appointment as a deputy sheriff."

I am not able to send you the original opinion written by the Chief Justice, but on January 15th, 1942 it was given wide publicity by a statement released by the Attorney General.

Very truly yours,

John S. S. Pearson
Assistant Attorney General

JBSF:AM

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June 24, 1942

Frank I. Cowan, Attorney General

Sumner Sewall, Governor of Maine

In connection with the many inquiries relative to the holding of a commission as Notary Public or Justice of the Peace by a person who is serving as an Auxiliary Policeman under Civilian Defense, you are advised that the discussion and confusion on this subject probably arises from the fact that duly constituted law enforcement officials holding offices which are provided for by statutes of the State, have been held by our Supreme Court to be a part of the executive branch of the government. Justices of the Peace are a part of the Judicial branch. Under our constitution no person belonging to one branch "shall exercise any of the powers properly belonging to either of the others. . . ."

As far as Auxiliary Policemen are concerned, under the present emergency civilian defense activities, these individuals are not, simply by reason of being such auxiliary police, holding public office. That is to say, it is not a public office provision for which is made or created by the statutes or constitution of this State, and they neither possess nor exercise any of the "powers" of the executive branch. When acting as Auxiliary Policemen, such individuals are in fact performing no more than the common law duty of any able bodied citizen of the State who may be required in time of emergency to perform those acts inherently his duty of allegiance to the sovereign State.

Since Auxiliary Policemen are not actually "exercising any of the powers" of the executive branch, there can be no incompatibility in such individuals retaining their commissions either as Notaries Public or Justices of the Peace.

This opinion must not be considered as an interpretation of the status of Civilian Defense Corps members mentioned in Section 2 of the Civilian Defense Act. Such persons are expressly endowed with "the powers and immunities of constables," and are thereby made a part of the executive branch.

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S/ Frank I. Cowan
Attorney General



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OFFICE OF
ROBERT A. MARDEN
COUNTY ATTORNEY
KENNEBEC COUNTY

DORR BUILDING 222 MAIN STREET
WATERVILLE, MAINE
TELEPHONE TRINITY 2-5268
2-5569

Sheriff + J.P.

3 me 484-487

September 12, 1958

Attorney General's Office
State House
Augusta, Maine

Gentlemen:

I have a simple little question, the answer to which I can not find in the books:

Can a Deputy Sheriff be appointed a Justice of the Peace? or Notary Public?

Yours truly,

ROBERT A. MARDEN

RAM/dmc

RECEIVED
SEP 15 1958

September 22, 1958

Robert A. Marden, Esquire
222 Main Street
Waterville, Maine

Dear Bob,

We have your letter of September 12, 1958, in which you ask, "Can a Deputy Sheriff be appointed a Justice of the Peace? or Notary Public?"

We draw your attention to Opinion of Justices.
3 Me. 484-487.

All opinions from this office have been consistent with the Opinion of Justices, and because of the almost similar powers held by both Justices of the Peace and Notaries Public, the same answer would probably apply to each office.

Very truly yours,

James Glynn Frost
Deputy Attorney General

jpg/c

FRED N. BECK
ATTORNEY-AT-LAW
PRESQUE ISLE, MAINE

June 15, 1942

Hon. Frank Cowan
Attorney General
State House
Augusta, Me.

Dear Brother Cowan:

A deputy sheriff in Presque Isle, Donald H. DeLong, was recently appointed a Notary Public by the Governor. He has not as yet qualified before a dedimus justice, and our clerk of courts, Robert Williams, has raised the question of whether or not the offices of deputy sheriff and notary public are incompatible.

Williams thought the question had been raised in your office last year and suggested that DeLong seek your opinion. Accordingly, I am writing in his behalf and would appreciate your giving me an opinion on this question at your convenience.

I have been unable to find the answer in the books, and personally see no public policy argument for making the two offices incompatible.

Thanking you for your attention in this matter, I remain,

Yours respectfully,

Fred N. Beck

