

MAINE STATE LEGISLATURE

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November 25, 1968

Honorable Walter Birt
State Representative
33 Pine Street
East Millinocket, Maine 04430

Dear Representative Birt:

You have asked that this office write to you to express its position relative to the question whether or not a conflict of interest would exist by reason of the fact that a teacher simultaneously held the position of selectman of a town, which town was located in a school union where the teacher was employed.

By written opinion of this office dated April 2, 1930, it was informally stated by the then Deputy Attorney General that he was not aware of any incompatibility accruing by reason of the fact that a person held the position of teacher and simultaneously the position of a selectman; both positions being in the same municipality. It should be noted that this April 2, 1930 position was not expressed as a formal opinion of the office.

Recently, this office, in letter form, stated informally that no basic incompatibility resulted by reason of the fact that a salaried teacher served, simultaneously, as a member of the city council in Augusta. Of course, this most recent situation involves a city charter, whereas your given situation would involve the general statutes. In this respect, may I draw

your attention to the provisions of Title 30 governing municipalities. Under "definitions" appearing in 30 M.R.S.A. § 1901, 7, it is seen that "municipal officers" mean selectmen of a town. Continuing, your attention is now directed to the provisions of 30 M.R.S.A. § 2251 wherein the subject of conflicts of interest is recited. The reference section 2251 provides that certain proceedings of municipalities and municipal officials are void whenever any contract concerning such "proceedings" is made by a municipality during the term of a municipal officer, and such municipal official has had a direct or an indirect pecuniary interest in such contract. We mention this section 2251 because under the given facts, the teacher can generally be considered to hold a contract with the town in which the teacher is employed. (The given facts do not involve a school administrative district.) I can inform you that a case has been presented to a Justice of the Supreme Judicial Court in this State in which the Court is to decide whether or not incompatibility exists by reason of the fact that a salaried teacher simultaneously holds the position of a member of the Augusta City Council. The case to which I refer has been orally argued by counsel for the parties, and a decision is expected shortly. This office is not involved with the case because no state agency is involved.

In conclusion, it is apparent that this office has not yet rendered any formal opinion regarding the question you have posed. Too, a case is presently pending in the courts of this State in which a decision is due shortly, and that decision may contain pronouncements shedding light upon your given facts. Of course, if the teacher is employed by a town other than the town in which the teaching contract exists, then it is quite likely that no incompatibility would exist. I mention this for the reason that it was not made clear to me whether or not the subject teacher is teaching in the town where this person would also simultaneously hold the position of selectman, or whether the teacher would hold the position of selectman in a town other than the one in which the teaching contract exists.

If the situation is one which can await the decision of the Court in the case referred to above, then I would strongly urge that the instant question be answered following the rendition of the decision in that case. Please feel free to contact me if there is further attention to be given to this matter.

Very truly yours,

JOHN W. BENOIT, JR.
Assistant Attorney General