

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 28, 1969

To Attorney General Erwin Dept. _____

From Leon V. Walker, Jr., Assistant Dept. _____

Subject Can a Member of Industrial Accident Commission Represent a
Defendant in a Criminal Case?

Upon notification of this office that a member of the Industrial Accident Commission had been appointed by a Justice of the Superior Court to represent the defendant in the criminal case of State v. Lund, the question was raised within the office whether such representation is compatible with this attorney's office as Industrial Accident Commissioner.

Only in a limited sense is an attorney a public officer. He does not come within the meaning of the term "public officer" or the like as used in the statutory or constitutional provisions concerning duality of public officer. 7 Am. Jur. 2d "Attorneys at Law" § 3.

Since, in the case under consideration, the attorney is not holding two public offices at the same time, there are no applicable prohibitory provisions in either the Maine statutes or constitution. This being so, the matter must be considered in the light of the common law. As was said in Howard v. Harrington, 114 Me. 443, 446:

"The answer to the question before us does not necessarily depend upon constitutional or statutory provisions. The doctrine of the incompatibility of offices is bedded in the common law, and is of great antiquity. At common law two offices whose functions are inconsistent are regarded as incompatible. The debatable question is, what constitutes incompatibility? . . . Two offices are incompatible when the holder cannot in every instance discharge the duties of each."

See opinion of Attorney General dated April 17, 1963.

Since, as we have seen, an attorney is not a public officer, but in fact is an officer of the court, the duties of both an attorney representing a defendant in a criminal action, and the duties of an Industrial Accident Commissioner, must be examined to determine whether the holder of both positions, simultaneously, can in every instance discharge the duties of each.

An attorney must faithfully, honestly, and consistently represent the interests and protect the rights of his client.

7 Am. Jur. 2d "Attorneys at Law" § 93.

His public duties are to aid the administration of justice, to uphold the dignity of the court and respect its authority, and to cooperate with it whenever justice would otherwise be imperiled. Where his duties to his client conflict with those he owes to the public as an officer of the court in the administration of justice, the former must yield to the latter.

Ibid, § 5.

The authority of a member of the Industrial Accident Commission is as follows:

"The commission shall have general supervision over the administration of this [Workmen's Compensation] Act, and shall have powers to make rules and regulations not inconsistent with this Act or other laws of the State for the purposes of carrying out the provisions hereof."

39 M.R.S.A. § 92.

While the Act does not so provide, it has always been understood that the office of Commissioner is part-time, and that a Commissioner is authorized to engage in the private practice of the law. Their relatively low salaries indicate that this is so, as does the provision in 39 M.R.S.A. § 91, that "the members of the commission shall receive their actual, necessary, cash expenses while away from their office on official business of the commission."

We have under consideration, then, the case of a member of the Industrial Accident Commission, whose authority as a public officer is limited to the provisions of the Workmen's Compensation Act, who is also acting for the interests of a defendant in a criminal action involving the State. In the trial and appellate stages of the criminal action there is no apparent involvement of the attorney's duties with his public office. And in a possible post-conviction procedure, it is not perceived how he could be in conflict with any of his duties and obligations as a member of the Industrial Accident Commission.

LVWJr:H


Leon V. Walker, Jr.