

MAINE STATE LEGISLATURE

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**Compatibility of office of State Archivist and President of
Maine Historical Society**

SYLLABUS:

The office of State Archivist is not compatible with the office of President of the Maine Historical Society.

FACTS:

Recently, the name of the State Archivist was placed in nomination for the Presidency of the Maine Historical Society, and that nomination will be considered at the Society's annual meeting scheduled for June 4, 1969.

QUESTION:

Is the office of State Archivist compatible with the office of President of the Maine Historical Society?

ANSWER:

No.

REASON:

The Secretary of State, pursuant to 27 M.R.S.A. § 276, has appointed a State Archivist deemed "qualified by special training or experience in archival or historical work". The office of State Archivist is unclassified; and while it is true that there is no express constitutional or statutory provision which prohibits the State Archivist from holding the office of President of the Maine Historical Society, the issue of incompatibility arises from the nature of the respective undertakings of the Maine Historical Society and the State Archivist. The bill establishing the Maine Archives was enacted at the regular session of the 102nd Legislature. P. L. 1965, c. 441. 27 M.R.S.A. § 275 - 279.

The Maine Historical Society was organized under Pl. & S.L., 1882, c. 118. Section 3 of that measure provided: "That it shall be the duty of said Society to collect and preserve, as far as the state of their funds will admit, whatever, in their opinion, may tend to explain and illustrate any department of civil ecclesiastical and natural history, especially of this State and of the United States, * * *". One reading the reference language would conclude that the Society possessed broad purposes of collection and preservation of materials tending to "explain and illustrate * * * civil, ecclesiastical and natural history" of Maine.

The question of incompatibility of offices necessarily depends on the circumstances of the individual case. Kobylarz v. Mercier, 130 N.J. Law 44, 31 A.2d 208; Mosher v. Board of County Commissioners of Howard County, 235 Md. 279, 201 A.2d 365. The common law doctrine of incompatibility of offices is expressed in Howard v. Harrington, 114 Me. 443, 96 A. 769. We mention the doctrine of incompatibility of offices because even though specific constitutional and statutory provisions furnish no bar to a person's holding of particular offices or positions simultaneously, the common law must be considered in determining whether a contemplated appointment will create incompatibility; unless the Legislature has, by clear and unambiguous language, evidenced its intention to abrogate the common law principle to the extent of permitting a person to hold compatible offices. Childs v. Moses, 178 Misc. 828, 36 N.Y.S. 2d 574, aff'd. 264 App. Div. 353, 38 N.Y.S. 2d 704, aff'd. 290 N.Y. 828, 50 N.E.2d 235, motion granted, 290 N.Y. 925, 50 N.E. 2d 307. Also see: Rainey v. Stovall (Ky.), 361 S.W.2d 518.

According to the provisions of 27 M.R.S.A. § 278, the State Archivist is charged with the duty of the retention and preservation of State records, inter alia. Thus, paraphrasing certain of the language appearing in the act incorporating the Maine Historical Society, the State Archivist might well collect and preserve that which tends to explain and illustrate Maine's civil and natural history.

Too, the provisions of 33 M.R.S.A. § 655 authorizes all persons, other than registers of deeds, possessing or owning records of the original proprietors of any town or plantation of this State, to deliver such records to either the Maine Historical Society or the State Archivist for preservation or safekeeping. Here, then, is an area where both the State Archivist and the Maine Historical Society collect and preserve specific records on a more or less selective basis, all in pursuance of purposes established by law.

We conclude, from a reading of the act incorporating the Maine Historical Society and the act creating the State Archivist, that the office of State Archivist is not compatible with the office of President of the Maine Historical Society; we express no opinion as to other offices in the Society.

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