

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

For the Years  
1967 through 1972

value, appropriately ascertained, of tangible assets permanently or habitually employed in the taxing State, including a portion of the intangible, or going-concern, value of the enterprise. The value may be ascertained by reference to the total system of which the interstate assets are a part. As the Court has stated the rule, the tax may be made to cover the enhanced value which comes to the (tangible) property in the State through its organic relation to the (interstate) system. *Pullman Co. v. Richardson*, 261 U.S. 330, 338, 43 S. Ct. 366, 368, 67 L. Ed. 682 (1923). Going-concern value, of course, is an elusive concept not susceptible of exact measurement. As a consequence, the states have been permitted considerable latitude in devising formulas to measure the value of tangible property located within their borders. Such formulas usually involve a determination of the percentage of the taxpayer's tangible assets situated in the taxing State and the application of this percentage to a figure representing the total going-concern value of the enterprise. A number of such formulas have been sustained by the Court, even though it could not be demonstrated that the results they yielded were precise evaluations of assets located within the taxing State." *Supra*, at 323.

Since the determination of the nature, amount and value of property subject to taxation is properly an administrative function, it might well be within the jurisdiction of the State Tax Assessor to provide assessing officials with a procedure for determining the amount of such property to be considered located in the State for taxing purposes. This is said with reference to 36 M.R.S.A. § 201 which gives the State Tax Assessor "general supervision over the administration of the assessment and taxation laws of the State and over local assessors and all other assessing officers in the performance of their duties, to the end that all property shall be assessed at the just value thereof in compliance with the laws of the State."

The method used to determine the amount of property located within the taxing district, and the just value of such property must be fair and reasonable; with equal treatment being given.

JAMES M. COHEN  
Assistant Attorney General

June 4, 1969  
Executive

Kenneth M. Curtis, Governor

Appointment of a faculty member of the University of Maine to membership on the board of trustees of the University.

#### *SYLLABUS:*

A person may not serve in the dual capacity of faculty member and trustee of the University of Maine.

#### *QUESTION:*

May a faculty member of the University of Maine serve as a member of the Board of Trustees of the University?

ANSWER:

No.

OPINION:

The creation of the so-called "super university system" by the enactment of P.L. 1967, c. 229, did not completely revise the charter of the University of Maine. The duties of the Trustees as delineated in Chapter 532 of the Private and Special Laws of 1865, which Act created the University, remain largely unchanged.

P. & S., 1865, c. 532, section 8 reads in part as follows:

"Sec. 8. The trustees shall appoint such directors, professors, lecturers and teachers in the college, and employ such other persons therein from time to time, as the means at their command may permit for the accomplishment of the objects enumerated and described in the fourth section of the act of congress. *Every officer and every person employed shall hold his office or employment at the pleasure of the trustees.* They shall, as soon as may be, arrange and make known the several courses of instruction which they will undertake at the outset of the college, and shall enlarge and improve the same whenever practicable, subject to the limitations prescribed by congress. . . ." (emphasis supplied)

It is readily apparent, without underestimating the importance of the role of the teacher in the university system, that a professor is an agent or an employee whose services may be dispensed with by the trustees at anytime when the interests of the institution so demand.

Were a professor to be appointed to the Board of Trustees, a clear conflict of interest, or incompatibility of office, would exist. Generally speaking, two offices are incompatible when the holder cannot in every instance discharge the duties of each. For a more detailed discussion, see *Howard v. Harrington*, 114 Me. 443, 96 A. 769 (1916).

Both the statutory language which creates the office of trustee and describes the duties of said office, and well established common law doctrine, compel us to answer your inquiry in the negative.

PHILLIP M. KILMISTER  
Assistant Attorney General

June 6, 1969

The Honorable Kenneth M. Curtis  
Governor of Maine  
State House  
Augusta, Maine

Dear Governor Curtis:

A question has arisen relative to the eligibility of Elmer W. Campbell for the office of Bank Commissioner. Mr. Campbell has retired from the First-Manufacturers National Bank of Lewiston and Auburn, Maine. The bank has a fully vested employee pension plan qualified under section 401 (a) of the Internal Revenue Code and administered by First Bank's Trust Department under a Declaration of Trust dated June 5, 1964. Mr. Campbell was employed by the bank for more than 40 years and is entitled to pension benefits under the plan. He will receive pension payments from this plan.