STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

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.

Our statutes, section 1 of Title 9 in the third paragraph provides:

"During his term of office the commissioner . . . shall not be an officer, director . . . in any financial institution or National bank . . . or *receive, directly or indirectly, any payment or gratuity from any such institution . . . .*" (Emphasis supplied)

The question is therefore raised as to whether or not the receipt of the pension from the First-Manufacturers National Bank of Lewiston and Auburn, Maine is a payment or gratuity from a National bank.

We answer in the negative. The language of the statute contemplates a payment or gratuity from a bank for a current service being rendered to that institution. A pension is a payment for past services rendered and a recognition of long years of service. It is not a payment or gratuity for a present service and, therefore, does not bring the recipient within the prohibitions of the statute.

Respectfully,

GEORGE C. WEST
Deputy Attorney General

June 17, 1969
Treasury

Richard L. Bailey, Accountant

Intra-departmental Transfer of Funds

SYLLABUS:

A transfer of funds from one account to another within a department may be made by the Governor and Council when recommended by the department head and the State Budget Officer.

FACTS:

The office of the Treasurer of State has in its Debt Retirement Appropriation (Account) some surplus funds. The Interest on Bonded Debt Appropriation (Account) has not sufficient funds to meet interest payments which will become due on some temporary loans.

QUESTION:

May funds be transferred from the Debt Retirement Appropriation (Account) to the Interest on Bonded Debt Appropriation (Account) both being within the office of the Treasurer of State?

ANSWER:

Yes.