

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

December 23, 1969

Honorable Charles F. Trumbull
31 Portland Street
Fryeburg, Maine

Dear Councillor Trumbull:

You have asked this office whether there would be any conflict in a Superintendent of Schools serving on the State Board of Education. I have examined Title 20 relative to matters pertaining to education in a rather sketchy manner. I find that there are areas which would indicate such a conflict that the two positions would be incompatible.

The Constitution does not specifically state that these two positions are incompatible. The statutes do not specifically state that these two offices are incompatible. We therefore turn to the common law doctrine for determination. At common law two offices whose functions are inconsistent with each other are regarded as incompatible. It appears that the functions of a Superintendent of Schools and of a member of the Board of Education would be inconsistent with each other.

I first refer to Title 20 M.R.S.A. § 59 which provides in substance that the Board shall in accordance with its own rules and regulations authorize the certification of teachers and other personnel for service in any public school in the State. This of course would include certification by the Board of the superintendents. This would mean that the Superintendent would be in a position of assisting in the certification of himself.

Next, we note that in the same Title, § 101, the Board of Education appoints a Commissioner of Education. In section 102, subsection 1, the Commissioner exercises a general supervision of all public schools and advises and directs the town committees and superintendents in the discharge of their duties. We here

have the situation where the Superintendent as a member of the Board would be employing the Commissioner of Education who in turn would be directing one of his members in the discharge of his duties. *ITS*

Section 152 of the same Title provides that the school directors of a school administrative district may discharge for cause a Superintendent of Schools. A Superintendent so discharged may appeal from the decision of such directors to the Commissioner for a public hearing. This would create a conflict inasmuch as the Superintendent might be a member of the Board who elected the Commissioner and then the Commissioner must determine the matter of his dismissal upon appeal.

The foregoing are instances of conflict between the office of a member of the Board of Education and a Superintendent of Schools. There may be other instances if a thorough check of Title 20 were made. I did not feel it necessary to check any further as I believe the foregoing is sufficient to show a conflict between the two offices.

Very truly yours,

GEORGE C. WEST
Deputy Attorney General

GCW/ec