

MAINE STATE LEGISLATURE

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March 19, 1970

Honorable H. Sawin Millet, Jr.
Dixmont
Maine

Dear Representative Millet:

I would understand the question, as posed in your letter of March 13, 1970, to be: May a member of the State Legislature also serve, without conflict, in the position of municipal selectman, assessor and overseer of the poor?

The relevant law may be found in Article IV, § 11 of the Maine State Constitution wherein it states: "No member of Congress, nor person holding any office under the United States (post office excepted) nor office of profit under this State, justices of the peace, notaries public, coroners and officers of the militia excepted, shall have a seat in either House during his being such member of Congress, or his continuing in such office."

I am unable to discover any interpretation of this, or similar laws of the other states, which would have the effect of construing the position either of municipal selectman or overseer of the poor as "an office of profit under this state."

However, a past opinion of the Attorney General and a variety of judicial opinions point to the conclusion that a municipal assessor is not a purely municipal office but rather one where the officer is charged with a number of duties under state law for which he is entitled to compensation and must therefore come within the definition of "an office of profit under this state."

I have enclosed a copy of the opinion mentioned above. You might wish to survey a few of the relevant cases: Town of Frankfort v. Waldo Lumber Co., 128 Me. 1, 145 A. 241 (1929); Dollof v. Town of Gardiner, 148 Me. 176, 182, 91 A. 320 (1952); Talbot v. Wesley, 116 Me. 208, 211, 100 A. 937 (1917); and Rossire v. City of Boston, 86 Mass. 57, 58 (1862).

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It would therefore appear to be incompatible for a member of the State Legislature to hold any position which might include among its conditions the duties of a municipal assessor.

Respectfully yours,

JOHN E. QUINN
Assistant Attorney General

JEQ/ec

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Incompt.

December 17, 1948

Mr. Arthur T. Dickson
6 B. Street
Old Orchard Beach, Maine

Dear Mr. Dickson,

I have your letter of the 7th, asking if it is possible for a State Representative to run for a municipal office such as that of selectman.

In reply I will say that Section 11 of Article IV of the Constitution of Maine provides that no person holding any office under the United States or under this State, justices of the peace, notaries public and officers of the militia excepted, shall have a seat in either house of our legislature so long as he continues in such office.

The office of selectman is not a State office and is not incompatible. However, our court has held that a municipal assessor is a State officer, and a member of the legislature cannot be a member of the board of assessors at the same time.

Trusting that this gives you the information you desire,

Very truly yours,

Ralph W. Farris
Attorney General

RWF:c

By 301

3/16/70

Memo



From
[Signature]
Office of
Attorney General
Augusta, Maine

For review:

Please draft a letter response to the attached, let me see it in rough form before it goes out.

Ask Elaine for help re: our file on Incompatibility - we may already have ruling.

[Signature]

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STATE OF MAINE

ONE HUNDRED AND FOURTH LEGISLATURE

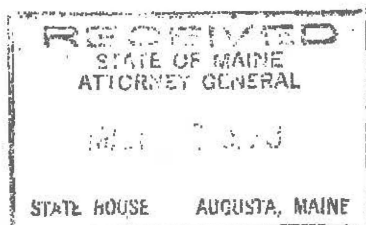
COMMITTEE ON EDUCATION

Dixmont, Maine
March 13, 1970

John Benoit, Asst Atty Gen'l
State House
Augusta, Maine

Dear Mr. Benoit,

I would like to request an official ruling as to any incompatibility which may exist by virtue of simultaneous service as an elected State Legislator and the position of a municipal Selectman, Assessor, and Overseer of the Poor. If, in your opinion, there is a conflict with such dual service, I would like to know specifically wherein it lies in terms of the combination of duties of the municipal position which I have described. If possible, I would appreciate an early reply since the local municipal election will take place on March 21.



Sincerely,
H. Sawin Millett, Jr.