

# MAINE STATE LEGISLATURE

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February 1, 1971

Representative David Ault  
House of Representatives  
State House  
Augusta, Maine

Re: Incompatibility/Selectman, Assessor

Dear Dave:

At your request, we have again reviewed our previous opinions directed towards the question of whether or not a member of the State Legislature may also serve, without conflict, in the position of municipal selectman and assessor.

It appears that we have previously ruled (March 6, 1923; February 20, 1926; March 3, 1932 and May 6, 1936) that the office of selectman is not incompatible with service as a member of the State Legislature.

We have previously ruled, however, that the office of municipal assessor and a member of the Legislature are incompatible (December 17, 1948 and March 19, 1970).

The basis of our several opinions was the language of the Constitution of Maine, Article IV, Part Third, Section 11, which states:

"No member of Congress, nor person holding any office under the United States (post officers 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."

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

Representative David Ault

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February 1, 1971

We would therefore adhere to our previous positions that it would appear to be incompatible for a member of the state Legislature to hold any position which might include among its conditions the duties of municipal assessor.

Sincerely yours,

JON R. DOYLE  
Deputy Attorney General

JRD:mfe