

# MAINE STATE LEGISLATURE

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July 23, 1971

Arthur C. Verow, City Clerk  
City Hall  
Brewer, Maine

Dear Mr. Verow:

You have inquired whether the positions of city clerk and bail commissioner are incompatible. We are prohibited by law from giving legal advice to other than state officials in the exercise of their official duties, but in the past as a convenience to municipal officials we have furnished them with information on the law relating to incompatible offices. This letter continues that tradition and is not to be understood as a formal opinion of this office. Nor should it be understood as legal advice, since it is the province of the attorney for the City of Brewer to advise you.

We start with the proposition that at common law, two offices whose functions are inconsistent are regarded as incompatible, and that acceptance of the latter office vacates the former. These common-law principles were adopted by the Maine court in Howard v. Harrington, 114 Me. 443, 96 Atl. 769 (1916), the leading case in Maine on the question of incompatibility. There is no statutory bar which prevents one person from holding the two offices you describe, compare 30 M.R.S.A. § 51; therefore, we must look to see if in fact the functions of city clerk and bail commissioner conflict in any manner.

The duties of the city clerk are largely ministerial and have to do with the recordation of documents and the issuance of certificates evidencing licenses granted by the municipality. See 30 M.R.S.A. § 2352. Further, he has certain duties with regard to municipal elections. 30 M.R.S.A., §c. 207, passim. He is ordinarily appointed by the mayor with the advice and consent of the city council, 30 M.R.S.A. § 5351, sub-§ 6, ¶ A, although the procedure may vary if the city charter so provides.

Bail commissioners are appointed by the Superior Court and must first be justices of the peace. 14 M.R.S.A. § 5541. They may, within their powers prescribed by statute, admit persons accused of crime, to bail. 14 M.R.S.A. § 5542.

We find no incompatibility on these facts between the offices of city clerk and bail commissioner.

Very sincerely yours,

ROBERT G. FULLER, JR.  
Assistant Attorney General

RGFJr./ec