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DEPARTMENT OF THE ATTORNEY GENERAL
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February 17, 1972

Honorable Elmer H. Violette
Senate Chambers
State House
Augusta, Maine

Dear Senator Violette:

This is in response to your oral request for an opinion on the question whether a person may hold the position of director of a school administrative district and simultaneously be a member of the town council of a participating administrative unit of the district sans resulting in incompatibility due to conflict of interest. It is our opinion that the reference offices are incompatible.

In an opinion dated May 15, 1968, this office advised the Department of Education that incompatibility of offices results when a school administrative district director simultaneously holds the office of selectman of a member town of the district. A copy of that opinion is attached. We reaffirm the conclusion in that opinion and apply it to the question you pose, for the reason that members of a town council are municipal officers (1 M.R.S.A. § 72, sub-§12) within the purview of the statutes relating to school administrative districts (Title 20). I appreciate this opportunity to correct one of the reasons given to support the conclusion in the May 15, 1968 opinion, and to expand upon those reasons.

The second sentence of page two of the opinion referred to the fact that district directors resolved questions regarding

disputed ballots. Of course, the State Board of Education has the responsibility to settle ballot disputes in school administrative districts; not the school directors.* Although no incompatibility of offices results from settlement of questions of disputed ballots in a school administrative district, by reason of the fact a director is also a municipal officer, several other factors amply demonstrate how conflict does exist. Some of them are offered below for your consideration:

1. 20 M.R.S.A. § 222. In a district dissolution situation, municipal officers and district directors meet with the State Board of Education respecting preparation of a dissolution agreement. Equitably, the persons in a member municipality should be fully represented at such a meeting by both municipal officers and directors representing interests in their respective areas of expertise.**

2. 20 M.R.S.A. § 302. Certain vacancies on the board of directors are filled by municipal officers. If a municipal officer holds membership on the board of directors when filling such a vacancy, he has a hand in the composition of the very board he comprises. The lesser the number of directors representing a municipality, the greater is the potential for the exercise of right to affect the makeup of the board, while a member of the board.***

* Sometimes the State Board of Education is referred to in Title 20 as "the State Board of Education" and at other times as the "board". Sometimes the board of directors of a school administrative district are referred to in Title 20 as a "board". The paragraph of section 222 involved with recounts and disputed ballots uses language such as "the board", "the board office", etc.; not clearly signifying which one of two boards possessed standing to settle questions of disputed votes.

** Mentioned in the May 15, 1968 opinion.

*** Mentioned in the May 15, 1968 opinion.

3. 20 M.R.S.A. § 303: Reapportionment of representation of district directors involves a meeting of municipal officers, district directors and two representatives of the administrative unit chosen at large by the municipal officers. A vote of 2/3 of those present and voting is required to effect a reapportionment. Does the municipal officer-district director have one or two votes? Is he present at the meeting in two capacities? One? Is his vote (or votes) colored by reason of his dual role? Equitably at least, the voters in the municipality represented by a person acting in such a dual capacity are entitled to complete, independent representation on such an important question as reapportionment.

4. 20 M.R.S.A. § 305: What is written in sub-paragraph 3 above equally applies to meetings of municipal officials and school directors on the subject of reconsideration of the method of sharing costs and assessment and payment schedule regarding such costs.

I am sure other reasons could be given in support of the conclusion of incompatibility, but that would be cumulative only.

Trusting that this letter serves to answer your oral question, I remain,

Respectfully yours,

John W. Benoit, Jr.
JOHN W. BENOIT, JR.
Deputy Attorney General

JWB Jr./ec
Enclosure