

# MAINE STATE LEGISLATURE

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August 31, 1972

Glenn Starbird, Jr., Deputy Comm.

Indian Affairs

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Attorney General

State Employee Serving as Indian Representative at the Legislature

**SYLLABUS:**

A person employed as a Sanitary Engineer by the State Department of Indian Affairs may lawfully hold the office of Indian Representative at the Legislature while continuing his state employment.

**FACTS:**

Our opinion has been requested by the Department of Indian Affairs with respect to the question whether a person employed as a Sanitary Engineer at Indian Township, who has recently been nominated by the Passamaquoddy Tribe at Indian Township for the position of Indian Representative at the Legislature, may, if elected, lawfully hold the office of Indian Representative at the legislature, and continue to be employed by the State.

**QUESTION:**

See Facts.

**ANSWER:**

Yes.

**REASONS:**

There is nothing under the law of this State which prohibits a State employee from serving as Indian Representative at the legislature while at the same time continuing his State employment.

We have, on more than one occasion, expressed the opinion that the Indian Representative at the Legislature is not a constitutional representative, i.e., he does not have the powers and authority of a member of the Legislature. See Attorney General's Opinion Re: Incompatibility dated May 20, 1969, and Attorney General's Opinion Re: Indian Representative at the Legislature, dated December 3, 1970.

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Accordingly, the Constitutional prohibition set forth in Article IV, Part 3, Section 11, against a person holding an office of profit having a seat in either House while continuing in such office does not apply to the office of Indian Representative at the Legislature. Also, we do not feel that the phrase "office of profit" embraces the position of Sanitary Engineer, since a person in that position does not have the obligations, independence, or authority usually conferred upon and expected of officers. See 1941-42 Report of Attorney General p. 90; Attorney General's Opinion Re: Office of Profit dated June 22, 1951.

Nor does the Constitutional prohibition set forth in Article III, Section 2, against a person belonging to one of the three departments of State (executive, legislative and judicial) exercising any powers properly belonging to either of the others apply, since the position of Indian Representative at the Legislature is beyond the scope of these departments. The person who holds such office is a tribal representative, as opposed to a State Representative. 22 M.R.S.A. § 4752, par. 6. The Indian Representative at the Legislature has no vote, and no power to independently, and in his sole discretion, introduce legislation. See Attorney General's Opinion dated December 3, 1970, supra.

For the foregoing reasons, and because there does not appear to be any potential conflict between the activities of a sanitary engineer and the activities of the Indian Representative at the Legislature, we feel a person may lawfully hold both positions simultaneously.

MLW:H

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