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STATE OF MAINE
DEPARTMENT OF MENTAL HEALTH AND CORRECTIONS

AUGUSTA, MAINE 04330

29 November 1972

Richard Carbonneau, Executive Director

Maine Commission on Drug Abuse

William J. Kelleher, Ass't. Atty. Gen'l.

Mental Health and Corrections

Informal Opinion Whether a State Legislator May Also Serve on the Drug Abuse Commission

You have indicated that you have already written to the member of the Commission who has recently been elected to the Legislature and that this problem may be solved by his resignation from the Commission. I have consequently only briefly considered this question.

Article IV, Part 3, §§10 and 11 of the Constitution of Maine offer the most guidance in this area. Section 11 provided the basis for an Opinion of the Attorney General in 1955 that an employee of the executive branch cannot carry out his duties and also be a member of the Legislature.

Another Opinion of the Attorney General was rendered in the early 1950's, based upon Section 10, holding that a member of the Legislature cannot be appointed a member of the State Highway Commission. However, Section 10 only prohibits a member of the Legislature from being appointed to any civil office for profit. Section 11 also turns on the issue of profit. I interpret this to mean that if a Commissioner is paid, he is prohibited from holding a seat in the Legislature at the same time. If he is not paid, I cannot discover a basis for a possible conflict of interest between the two positions. I must caution that if it is determined that the person involved wishes to serve in both positions, a formal opinion from this office should be requested.

William J. Kelleher
Assistant Attorney General

WJK/vv