

# MAINE STATE LEGISLATURE

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December 13, 1972

E. Stephen Murray, Ass't.

A.G.

George C. West, Deputy

A.G.

Incompatibility - Assistant Attorney General and Town Councilman

I have your memo of December 11 asking for an opinion as to the incompatibility of the office of Assistant Attorney General and town councilman. I know of no constitutional or statutory law in this State which describes these two positions as being incompatible. I am sure they are incompatible however.

I would point out that there are any number of areas in which there can be incompatibility. Town councilmen can be called upon to make decisions in the area of welfare involving settlements of individuals which would call into play adversary proceedings against the State. There could be, as you are aware, many instances where the State and the municipality have differences in the environmental field. There can also be differences between the State and the Department of Transportation in the highway area. Although the councilmen do not directly control or operate the schools, nevertheless they are the guardians of the purse strings and there could be conflict between councilmen and the State Department of Educational and Cultural Services.

Our Court has said:

"Two offices are incompatible when the holder cannot in every instance discharge the duties of each. The acceptance of the second office, therefore, vacates the first."  
Howard v. Harrington, 114 Me. at 446.

The two offices "cannot in every instance" have their respective duties discharged by one man. Hence one man cannot hold each office.

GCW/ec