

MAINE STATE LEGISLATURE

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December 18, 1972

Kenneth M. Curtis, Governor

Executive

John W. Benoit, Jr., Deputy

Attorney General

Question whether a person may simultaneously hold the positions of faculty member and trustee of the Maine Maritime Academy

SYLLABUS:

A person may not hold the office of trustee of the Maine Maritime Academy while at the same time being a faculty member of the Academy.

FACTS:

We have your inter-departmental memorandum dated December 12, 1972, noting the existence of the June 4, 1969 Attorney General's ruling that a person could not serve in the dual capacity of faculty member and trustee of the University of Maine, and asking for our opinion on the question whether a person could serve as a faculty member and at the same time as a trustee of the Maine Maritime Academy.

QUESTION:

Whether a person may simultaneously hold the position of faculty member and trustee of the Maine Maritime Academy?

ANSWER:

No.

REASON:

The Maine Maritime Academy originated in 1941 by reason of legislative enactment, P. & S.L., 1941, c. 37. (Initially, the institute was titled: "Maine Nautical Training School", which name was changed by the Legislature in 1942). Section 1 of the Act creating what is now known as the Academy specified that: "The affairs of the school shall be controlled by a board of 9 trustees * * * ." (Later, the Legislature increased the number of trustees to 12. P. & S.L., 1949, c. 39) Section 2 of the 1941 legislation set forth the powers of the trustees as follows:

"Said trustees shall provide and maintain a nautical school for the instruction of students in the science and practice of navigation and in practical seamanship, steam, diesel and electrical engineering, radio and radio communication, and of ship operation, ship construction and ship and boat design, provide books, stationary, apparatus and other supplies, and equipment needed in the work thereof. The board may appoint and remove necessary instructors and other employees, determine their compensation, fix the terms upon which students shall be received and instructed therein and discharged therefrom, and make all regulations convenient or necessary for the management of said school and provide from time to time for actual sea experience for its students."
(Emphasis supplied)

Although the Legislature has added additional paragraphs to § 2, setting forth trustees' powers, those amendments have not altered the language quoted above. For example, at the Special Legislative Session in 1942, an additional paragraph was added to § 2 of the Act giving the trustees of the Academy power to appoint a board of visitors. P. & S.L., 1941, c. 102, § 2.

The Board of Trustees of the Academy are authorized to appoint, remove and determine the compensation of the faculty at the Academy. If a faculty member of the Academy simultaneously held the office of trustee of the Academy, he would then possess the authority to determine his own compensation. At the same time, it seems incongruous that he should also hold the power to remove himself from the faculty.

The Maine Law Court has ruled that two offices are incompatible when the holder cannot in every instance discharge the duties of each. Howard v. Harrington, 114 Me. 443, 96 A. 769 (1916). By way of analogy see the opinion of the Attorney General's office dated January 23, 1968 ruling that a faculty member at one of the State colleges* could not simultaneously hold the office of member of the State Board of Education having supervisory powers over the State colleges.

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* Now merged into the University of Maine system.