

MAINE STATE LEGISLATURE

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January 17, 1973

Richard W. Carbonneau

Maine Commission on Drug Abuse

Leon V. Walker, Jr., Assistant

Attorney General

Incompatibility of Legislator being Member of Maine
Commission on Drug Abuse

This is in reply to your memorandum of December 8, 1972, in which you ask for an opinion whether a member of the Commission on Drug Abuse can at the same time qualify as a member of the State Legislature.

Since a member of the Maine Commission on Drug Abuse (as established by P.L., 1971, c. 379) serves without compensation, a member of the Commission is not holding an "office of profit" under Article IV, Part Third, section 11, of the Maine Constitution, and there is no incompatibility under that limitation of the Constitution.

However, Article III, section 1, of the Constitution provides that "the powers of this government shall be divided into three distinct departments, the legislative, executive and judicial"; and Article III, section 2, provides that,

"no person . . . , belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the case herein expressly directed or permitted."

There is no applicable exception in this situation.

In 5 M.R.S.A. § 3364, it is provided that,

"The Maine Commission on Drug Abuse, for administrative purposes, shall be lodged in the Executive Department, with authority to request any state department or agency . . . to provide such personnel, financial assistance, facilities and data as will help the Commission to fulfill its responsibilities."

Its responsibilities, (as enumerated in § 3365) and its authority, (as stated in § 3366) make it clear that the Commission exercises sovereign powers in the executive department of the state government. Under Article III, § 2, therefore, a member of the Commission

cannot at the same time exercise any of the powers of the legislative department.

In Howard v. Harrington, 114 Me. 443, 445, the Supreme Judicial Court of Maine said:

"Where one has two incompatible offices, both cannot be retained. The public has a right to know which is retained and which is surrendered. It should not be left to chance, or the uncertain and fluctuating whim of the office holder to determine. The general rule, therefore, that the acceptance of and qualification for an office incompatible with one then held is a resignation of the former, is one certain and reliable, as well as one indispensable for the protection of the public."

In view of the above, it is our opinion that when a member of the Commission on Drug Abuse, accepted and qualified as a member of the Legislature, he thereby vacated ipso facto his office as member of the Commission.

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