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November 8, 1973

Richard Rothe

State Planning Office

Martin L. Wilk, Assistant

Attorney General

selectman serving on a Planning Board

This will respond to your memorandum to George West dated October 19, 1973 requesting our opinion whether a town selectman may lawfully serve as a member of a town planning board. For the reasons which follow, it is our opinion that absent any municipal charter or ordinance provisions to the contrary, a person may simultaneously hold both positions.

There is currently no constitutional or state statutory provision which prohibits a selectman from also serving as a member of a town planning board. While 30 M.R.S.A. § 4952 did at one time provide that "a municipal officer may not be a member or associate member of the planning board," that statute has been repealed. See Chapter 455, P.L. 1971 § 3.

During the same session when the legislature repealed 30 M.R.S.A. § 4952, it enacted a new § 4956 to Title 30 which authorizes municipal officers to adopt interim subdivision regulations where a municipality has not established a planning board. See Chapter 454, P.L. 1971. The precise language of § 4956 (2) is as follows:

"When a municipality has established a planning board, agency or office, such board, agency or office may adopt regulations governing subdivisions which shall control until superseded by provisions adopted by the legislative body of the municipality. Where a municipality has not established a planning board . . . the municipal officers may adopt subdivision regulations which shall control until superseded by provisions adopted by the legislative body of the municipality."

There would appear to be no question but that a selectman is a municipal officer within the meaning of the language referred to above. If a selectman or a board of selectmen may adopt subdivision regulations in the absence of a planning board, there would appear to be no reason why a selectman cannot also sit on a planning board charged with the responsibility of adopting such regulations where one is established. The function performed by the selectman would in each case be the same.

We recognize that a planning board may be vested with responsibilities other than, and in addition to, adopting subdivision regulations; but, we do not foresee any areas of significant conflict between a selectman also acting as planning board member insofar as the offices themselves are concerned.

Notwithstanding the foregoing, there may be a municipal charter or ordinance provision which explicitly or implicitly prohibits a person from simultaneously holding both positions. Since each municipality can amend its own charter and adopt its own ordinances, any final opinion should consider and include the particular municipal provisions which pertain.

Martin L. Wilk
Assistant Attorney General

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