

# MAINE STATE LEGISLATURE

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March 22, 1974

The Honorable F. Davis Clark  
State of Maine  
District Court  
Bangor, Maine 04401

Dear Davis:

Your letter of March 18 addressed to Doris Hayes, Supervisor, Corporation and UCC Division has been referred to this office for a reply. You have asked the question whether or not a Judge may also be a Dedimus Justice. I find that this office has never previously answered this question.

I find, in Opinion of the Justices 70 Me. at pages 591 and 592, a partial answer to your question. The Court speaks in terms of a "magistrate" may give the oath of office to the members of the Legislature in the absence of a Governor and Council.

This, of course, raises the question of what is a "magistrate". Invariably, we think of that name as referring to a judicial officer. However, in reading Black's Law Dictionary we find the following definition:

"MAGISTRATE. A public officer belonging to the civil organization of the state, and invested with powers and functions which may be either judicial, legislative, or executive. But the term is commonly used in a narrower sense, designating, in England, a person intrusted with the commission of the peace, and, in America, one of the class of inferior judicial officers, such as justices of the peace and police justices. *Martin v. State*, 32 Ark. 124; *Scanlan v. Wright*, 13 Pick. (Mass.) 528, 25 Am.Dec. 344; *Ex parte White*, 15 Nev. 146, 37 Am.Rep. 466; *Kurtz v. State*, 22 Fla. 44, 1 Am. St. Rep. 173; *State v. Allen* 83 Fla. 655, 92 So. 155, 156; *Merritt v. Merritt*, 193 Iowa, 899, 188 N.W. 32,34.

"A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense. Pen. Code Cal. § 807.

The word "magistrate" does not necessarily imply an officer exercising any judicial function, and might very well be held to embrace notaries and commissioners of deeds. *Schultz v. Merchants' Ins. Co.*, 57 Me. 326.

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I cannot find any real definition of a Dedimus Justice. Apparently, originally, the office was a Dedimus Potestatem but the words Dedimus Justice do not appear in Black's Law Dictionary nor in Words and Phrases.

I must conclude, from all the foregoing, that a Dedimus Justice is a magistrate and that a magistrate may be either within the judicial or executive branch of the government. Therefore, I can see no conflict between the office of a Dedimus Justice and that of a Judge or Justice of a Court. As you realize, a Judge has the power to deliver an oath to a witness and he also has the power to act as a Justice of the Peace. 4 M.R.S.A. § 158. I trust this will answer your questions and allay your fears of acting improperly.

Very truly yours,

GEORGE C. WEST  
Deputy Attorney General

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