

# MAINE STATE LEGISLATURE

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January 8, 1975

Honorable John W. Jensen  
House of Representatives  
State House  
Augusta, Maine

Dear John:

This is a reply to your letter of January 5 requesting an opinion as to the legality of the recent appointment by Governor Curtis and confirmation by the previous Executive Council of Mr. Harvey Johnson to the State Board of Environmental Protection. It is our opinion that the Constitution of Maine precluded Mr. Johnson from being so nominated and confirmed to a position on the State Board of Environmental Protection, under the circumstances.

The provisions of the Constitution of Maine, Art. V., Part Second, § 4, specify that:

"No member of Congress, or of the Legislature of this State, nor any person holding any office under the United States (post officers excepted), nor any civil officers under this State (justices of the peace and notaries public excepted) shall be Councillors. And no Councillor shall be appointed to any office during the time, for which he shall have been elected."

Mr. Johnson was appointed by the Governor and confirmed by the Executive Council during the term for which he was elected a member of the Executive Council. Thus, the appointment and confirmation occurred contrary to the quoted provision of the Maine Constitution.

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Although it would make no difference in the result we reach if Mr. Johnson had resigned as Executive Council member prior to his appointment and confirmation, we are advised by the Clerk of the Executive Council, as well as the Governor's Office, that Mr. Johnson did not resign his office as Executive Council member prior to the expiration of his term.

Very truly yours,

Joseph E. Brennan

JOSEPH E. BRENNAN  
Attorney General

*jn*  
JES/ec

cc:  
Honorable James B. Longley,  
Governor, State of Maine  
William R. Adams, Comm.  
D.E.P.