

# MAINE STATE LEGISLATURE

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*Incompatibility*

January 9, 1975

Honorable Raymond N. Faucher  
House of Representatives  
State House  
Augusta, Maine

Dear Representative Faucher:

This will respond to your inquiry whether it is permissible for a member of the Legislature to simultaneously hold the office of Bail Commissioner. For the reasons which follow, it is my opinion that it would not be proper to hold both offices at the same time.

Sections 1 and 2 of Article III of the Maine Constitution provide, respectively:

"Section 1. The powers of this government shall be divided into three distinct departments, the legislative, executive and judicial."

"Section 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in cases herein expressly directed or permitted."

Bail Commissioners are appointed by the Superior Court (14 M.R.S.A. § 5541), hold office during the pleasure of the Court (14 M.R.S.A. § 5541), and may admit persons to bail and exercise the same power as any Justice of the Supreme Judicial Court or Superior Court can." (14 M.R.S.A. § 5542). It is, therefore, quite clear that the office of Bail Commissioner is judicial in nature.

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In view of the constitutional proscription against any person simultaneously exercising powers of the legislative and judicial branches of government, we conclude that the offices of Legislator and Bail Commissioner are constitutionally incompatible.

If I may be of any further assistance, please let me know.

Very truly yours,

JOSEPH E. BRENNAN  
Attorney General

MW  
JEB/ec