

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date March 5, 1975

To Joseph M. Kozak, Assistant Dept. Attorney General  
From Joseph E. Brennan, Attorney General Dept. " "  
Subject Office policy concerning Assistant Attorneys General serving in other public capacities.

This is a reply to your memorandum dated March 4 requesting an opinion whether an Assistant Attorney General could simultaneously hold the position of chairman or member of a municipal board of appeals. For reasons which follow, it is my opinion that an Assistant Attorney General should not simultaneously hold the position of chairman or member of a municipal board of appeals.

A municipal board of appeals is authorized to be created pursuant to the provisions of 30 M.R.S.A. § 2411. The chairman of a municipal board of appeals presides at all meetings of the board and is the official spokesman of the board. 30 M.R.S.A. § 2411, sub-§ 3, 1A.

The provisions of 30 M.R.S.A. § 2411, sub-§ 4, state that:

"Any municipality establishing a board of appeals under this section may vest the board with the power to hear any appeal by any person, affected directly or indirectly, from any decision, order, rule or failure to act of any officer, board, agency or other body where such appeal is necessary, proper or required."

It is possible for a municipal board of appeals to entertain a matter in which the State, through one of its agencies, wishes to be heard. That agency may very well be represented by an Assistant Attorney General. In such an instance, an Assistant Attorney General would, as chairman or member of the board of appeals, sit in judgment of a matter at a time when one of the parties was represented by another Assistant Attorney General. Among other considerations, any decision by a municipal board of appeals under that sort of situation, which decision was consistent with the position expressed by the State agency represented by the Attorney General's Office, would subject this Department to criticism, no matter how free from question the proceedings and deliberations of the municipal board of appeals might be.

In conclusion, it is my opinion that an Assistant Attorney General should not simultaneously sit on a municipal board of appeals.

JOSEPH E. BRENNAN  
Attorney General

JEB/ec