

MAINE STATE LEGISLATURE

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March 27, 1975

Honorable John H. Rollins
House of Representatives
State House
Augusta, Maine

Dear Representative Rollins:

This is a reply to your request for advice in connection with your intention to prepare legislation to allow a member of the Legislature to simultaneously hold the office of selectman and assessor of a municipality.

We have repeatedly held that a Legislator may not hold the office of municipal assessor. We base that opinion on Article III, §§ 1 and 2 of the Constitution of Maine. Article III, §1 divides the powers of State government into three distinct Departments: legislative, executive and judicial. Article III, § 2, provides that "no person . . . belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others . . ."

Although a municipality elects a municipal assessor, the assessor performs the duty of assessing property taxes as agent of the State, for the benefit of the municipality.

See: Dolloff v. Town of Gardiner, 148 Me. 176
Town of Frankfort v. Waldo Lumber Co., 128 Me. 1
Talbot v. Inhab. of Wesley, 116 Me. 208, 211

In so doing, he is acting under the laws of the State, and is exercising powers belonging to the Executive Department of the State. If, at the same time, the assessor is serving as a member of the State Legislature, he is also exercising the powers of both the Executive and Legislative Departments in violation of Article III, § 2.

To accomplish your purpose would require the repeal of, or at least a major amendment to the Maine Constitution, Article III, §§ 1 and 2, which are fundamental concepts of Constitutional Law and are a portion of the original Constitution of Maine. If you wish such legislation drafted, please see me.

Very truly yours,

Leon V. Walker, Jr.

Leon V. Walker, Jr.
Assistant Attorney General

LWVJr/mf