

# MAINE STATE LEGISLATURE

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Incompatibility of State Senator serving on P&U.C.

### SYLLABUS

A member of the State Senate may be appointed to serve as a member of the Public Utilities Commission provided that office was not created, nor its emoluments increased during his or her term as Senator, and the Senator resigns from the Legislature prior to qualifying for the office of Commissioner, and further providing that there are no conflicts of interest under the provisions of 35 M.R.S.A. § 2.

### FACTS

State Senator Minnette Cummings has been nominated by the Governor to serve as a member of the Public Utilities Commission. You state that she will resign her Senate seat after the consent of the Council has been given to her appointment, and before she qualifies for office, and that the office to which she has been nominated has not been created, nor the salary of the office increased during her tenure as Senator.

### QUESTION

Under the above facts, may Senator Cummings resign as State Senator and accept appointment as a member of the Public Utilities Commission without being in violation of the Constitution or of statutory provisions? Yes.

### REASON

(1) Article VI, Pt. 3, § 10 of the Constitution of Maine provides as follows:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which increased during such term . . ."

A member of the Public Utilities Commission holds a civil office of profit within the definition of the term as stated in 51-54 Atty. Gen. Rep. 56. The office has not been created, however, nor does it appear its emoluments will be increased prior to her appointment. The language of the Constitution clearly indicates that the prohibition pertains only when the office is created, or its salary is increased during a specified term. See 51-54 Atty. Gen. Rep. 54.

(2) Article III, Sec. 1, provides:

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

Article III, Sec. 2, provides:

"No person . . . belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others . . . ."

It would be incompatible, therefore, for Senator Cummings to simultaneously occupy the office of State Senator and the office of member of the Public Utilities Commission. See 51-54 Atty. Gen. Rep. 38. Her resignation from the Senate, however, prior to assuming the office of P.U.C. chairperson will avoid such incompatibility.

(3) The statute relating to appointment of members of the Public Utilities Commission provides in 35 M.R.S.A. § 2, with relation to conflicts of interest, as follows:

"No member . . . of said Commission shall have any official or professional connection or relation with or hold any stock or securities in any public utility, as defined in section 15, operating within this State . . . no Commissioner shall hold any other civil office of profit or trust under the Government of the United States or of this State . . . , nor shall he serve on or under any committee of any political party . . . ."

To be eligible for appointment as Commissioner, Senator Cummings must have no connection or relation with, or hold securities in, any public utility, must resign from the State Senate, or any other office of profit or trust under either the Federal or State governments, and must resign from any political committee of which she may be a member.

LVWJr/mf