

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

May 20, 1975

The Honorable Donald H. Burns
House of Representatives
State House
Augusta, Maine

Dear Representative Burns:

In answer to your inquiry on this date relating to the possible incompatibility of a person holding the offices of State Representative and constable, please be advised that in my opinion, a conflict of interest would exist.

I enclose for your perusal a recent copy of an opinion by Attorney General Brennan which, in effect, answers the question which you have raised.

Although a constable may not possess all of the common law or statutory powers of a sheriff or police officer, he is indisputably a law enforcement officer, and as such, acting as a member of the executive branch of the government.

If you have any further questions, please do not hesitate to call this Office.

Very truly yours,


PHILLIP M. KILMISTER
Assistant Attorney General

PMK:mfe
enc.

Incompat.

January 8, 1975

Mr. Richard P. Needham
119 Bennoch Road
Stillwater, Maine 04489

Dear Mr. Needham:

This will respond to your letter dated January 2, 1975, inquiring whether it is permissible for a Legislator to also simultaneously serve as a municipal police officer and as a Justice of the Peace. For the reasons which follow, it is my opinion that it is not permissible to hold all three offices simultaneously.

Article III, §§ 1 and 2 of the Maine Constitution, provides, respectively:

"Section 1. The powers of this government shall be divided into three ~~distinct~~ ^{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 the cases herein expressly directed or permitted."

By virtue of these provisions the offices of Legislator (belonging to the legislative branch), police officer (belonging to the executive branch) and justice of the peace (judicial branch) are constitutionally incompatible, and a person holding one may not at the same time hold either of the others. Howard v. Harrington, 114 Me. 443, 96 A. 769 (1916). Opinion of the Justices, 3 Me. 384 (1825).

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

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

JEB
JEB/ec