

MAINE STATE LEGISLATURE

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~~XXXXXXXXXXXX~~
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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 5, 1976

Honorable Donald H. Burns
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Burns:

Your letter of January 2, 1976, poses several questions concerning conflicts of interest. Specifically, you ask whether a State Legislator may serve as (1) tax collector for the Town of Anson, (2) manager of the Anson Water District, (3) a justice of the peace, or (4) a notary public.

(1) It is our opinion that the offices of State Legislator and tax collector for the Town of Anson are constitutionally incompatible. Article III, Sec. 1 and 2 of the Constitution of Maine provides:

"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 the cases herein expressly directed or permitted."

36 M.R.S.A. § 751 provides in applicable part that "[s]tate and county taxes shall be collected by the tax collector. . ." ("Tax collector" refers to the person chosen by a city, town, or plantation to collect any tax due that city, town or plantation. See 36 M.R.S.A. § 501.) In Inhabitants of the Town of Frankfort v. Waldo Lumber Co., 128 Me. 1 (1929), the Maine Supreme Court stated that when municipal officers assess and collect taxes they are acting as agents of the State. In Opinion of the Justices, 3 Me. 484 (1825) the Maine Supreme Court noted that sheriffs and coroners aided in collecting State

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taxes, and thus, were aiding the governor in the execution of the laws and belonged to the executive department. Since the tax collector for the Town of Anson collects State taxes, and since the collection of State taxes involves the exercise of powers belonging to the executive department, Article III, Sec. 1 and 2 of the Maine Constitution prohibits a person who holds the office of State Legislator from holding at the same time the office of tax collector.

(2) It is our opinion that it would not be incompatible for a State Legislator to be the manager of the Anson Water District. In an opinion dated December 30, 1965, we said that it would not be incompatible for a State Legislator to serve as Trustee of a Water District, noting that the water district was a quasi-municipal corporation. Anson Water District was created by Chapter 200 of the Private and Special Laws of 1915, and was expressly declared to be a quasi-municipal corporation. There is, likewise, nothing under the Maine Constitution nor under the general principles of incompatibility which would prohibit a State Legislator from acting as the manager of the Anson Water District.

(3) and (4). It is our opinion that a State Legislator may serve as a justice of the peace or as a notary public. Article IV, Part 3, Section 11, which has been fully set out above, so provides. In Opinion of the Justices, 3 Me. 484 (1825), the Maine Supreme Court referred to ". . . article 4, part 3, section 11, which allows justices of the peace, notaries public, coroners, and officers of the militia to hold seats in either branch of the legislature; . . ." ^{1/}

To the extent that an earlier opinion of this Office dated January 8, 1975 (dealing with the offices of Legislator, Police Officer and Justice of the Peace) is inconsistent with this opinion, this opinion prevails.

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

JEB:jg

cc: Richard P. Needham

^{1/} Article IX, Section 2 of the Constitution of Maine provides in part that "No person holding the office of . . . any inferior court . . . shall be a member of the Legislature; . . ." In Opinion of the Justices, 68 Me. 594 (1878), the Maine Supreme Court held that a justice of the peace is not to be considered a justice of an inferior court under Article IX, Section 2 of the Maine Constitution.