

MAINE STATE LEGISLATURE

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*Incompatibility File
Legislator: Local Housing Authority Staff*

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April 22, 1977

Honorable Armand A. LeBlanc
House of Representatives
State House
Augusta, Maine 04333

Dear Representative LeBlanc:

This letter responds to your request for an opinion from this office on a question concerning compatibility of offices. It is our understanding that you intend to apply for a position as Executive Director of the Van Buren Housing Authority, but before proceeding further you wish to know whether there would be any incompatibility or conflict of interest between this position and your office as State Representative. The answer to your question is that there would be no incompatibility or conflict of interest inherent in the positions themselves.

Local housing authorities are established by statute and are designated as public corporation exercising public and governmental functions. 30 M.R.S.A. §§ 4551, et seq. The authorities are established in each municipality and their functions and powers are exercised solely on a municipal basis. Appointment of an Executive Secretary is made by the five commissioners of the authority and it is the commissioners that establish the duties of the Executive Director. 30 M.R.S.A. § 4602, sub-§ 1, ¶ B. Therefore, an Executive Secretary has no duties or powers which would extend beyond the municipal duties and powers of the authority itself.

This office has previously expressed its opinion that a State Legislator may also be the manager of a local water district, which is also a quasi-municipal corporation (Opinion of the Attorney General, January 23, 1976), or a town manager, who is a municipal appointee (Opinion of the Attorney General, September 24, 1973).

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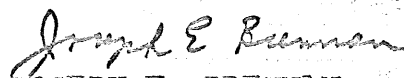
The basis for these opinions is that a municipal appointee holding office in a quasi-municipal corporation is not holding ". . . any civil office of profit under this State. . . ." which might fall within the prohibition of Article IV, Part Third, Section 10 of the Constitution of Maine. Nor would such municipal office constitute employment in the Executive or Judicial Departments of the State, so that there would be no question of "separation of powers" under Article III, Sections 1 and 2 of the Constitution of Maine. Therefore, service as a State Legislator and as Executive Director of a local housing authority would not be constitutionally incompatible.

In addition, it is our opinion that these two positions would not be incompatible as a matter of common law under the several tests set forth in Howard v. Harrington, 114 Me. 443 (1916). The nature and duties of the two offices are such that there is no inherent inconsistency or repugnancy involved and the duties of each office may be simultaneously performed without conflict.

Finally, it should be noted that there is a separate conflict of interest provision for housing authorities which is set forth in 30 M.R.S.A. § 4603. However, this section is designed to cover pecuniary interests of the Executive Director, Commissioners and employees of the authority and would not prohibit an Executive Director from simultaneously serving as a State Legislator.

We hope the foregoing information will be helpful to you. Please call upon us whenever you feel we may be of assistance.

Sincerely,



JOSEPH E. BRENNAN
Attorney General

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