

MAINE STATE LEGISLATURE

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STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

October 7, 1977

Representative Donald H. Burns
Rte. 1, Box 485
North Anson, Maine 04958'

Dear Representative Burns:

This is in response to your request of October 3, 1977, for an opinion concerning Article IV, Part 3, Section 10 of the Constitution of the State of Maine. In particular you have asked:

1. May a Senator or Representative who has been elected to a current term of the Legislature be named to any civil office of profit which requires the approval of the Legislature for appointment?
2. May a member of the 108th Legislature be appointed to a commissionership in that each commissioner was granted a \$10.00 a week increase?

Discussion:

Article IV, Part 3, § 10 provides:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office for profit under this State, which requires the approval of the Legislature for appointment or which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people."*

* This section of the Constitution was amended effective January 4, 1977. A key feature of the amendment was to add the phrase: "which requires the approval of the Legislature for appointment." The effect of this phrase is to change the situation which existed in previous years whereby legislators could be appointed to any appointive position where the emoluments of the position had not been raised during the term of the legislature.

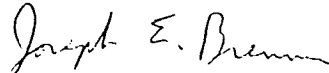
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This section of the Constitution, on its face, indicates, in response to your first question that no Senator or Representative may be appointed to any civil office where that appointment requires legislative approval. The prohibition on such appointments extends to the entire term for which the legislator is elected, regardless of whether the legislator serves the full term or decides to resign in advance of completion of the term.

I assume your second question concerns an office not requiring legislative approval. No Senator or Representative of the 108th Legislature could be appointed to such a post inasmuch as the \$10.00 a week pay increase adopted by P. L. 1977, Chapter 579, § 1, represents an increase in the emoluments for such officials. The only exception is some officials which are subject to 2 M.R.S.A. § 7 and did not receive a raise.

I hope this information is helpful.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB:jg

cc: Representative John Jensen
John L. Martin, Speaker of the House
Joseph Sewall, President of the Senate