

# MAINE STATE LEGISLATURE

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*M. Const. Art IV PT 3rd 8/10/77*

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December 29, 1977

Honorable Harry F. Rideout  
R.F.D. #2  
State Road  
Presque Isle, Maine 04769

Dear Representative Rideout:

I am responding to your oral request to this office for an opinion concerning simultaneous tenure of the offices of State Legislator and County Treasurer. It is our understanding that your question stems from the fact that the Aroostook County Treasurer has submitted his resignation to be effective on January 1, 1978. Pursuant to the provisions of 30 M.R.S.A. § 611, the Governor will appoint a resident of the County to serve as Treasurer until the first day of January following the next biennial election, i.e., January 1, 1979. Your question is if the Governor should choose a member of the 108th Legislature to serve as County Treasurer, would it be legally permissible for the individual to continue to hold both offices during the period of appointment. Our answer to this question is that it would not be permissible to hold both offices simultaneously, for the reasons stated below.

Title 30 M.R.S.A. § 601, cited above, contains a listing of certain officers who may not be County Treasurer. Though State Legislators are not included in this list, the list cannot be considered as exclusive or exhaustive because of additional constitutional prohibitions. Article IV, Part Third, Sections 10 and 11, Article IX, Section 2, Constitution of Maine. Two of these constitutional provisions - Article IV, Part Third, Sections 10 and 11 - are of special concern with regard to your question. Section 10 provides that no legislator may be appointed to ". . . any civil office of 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 has at

least arguable applicability to your question since the salary of the Aroostook County Treasurer was increased by the 108th Legislature (P.L. 1977, Chapter 67), and the office would be filled on an interim basis by appointment rather than by election even though the office of Treasurer is otherwise an elective office. Section 11 may be more directly applicable since it states that no person holding any "office of profit under this State" shall hold a seat in the Legislature during the period that he continues in his "office of profit." Either or both of these constitutional provisions would prevent a member of the present Legislature from holding the interim appointed position as Aroostook County Treasurer if that position is a "civil office of profit" or "office of profit" under the State.

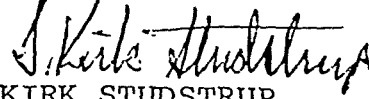
Guidance in identifying an "office of profit" is found in an Opinion of the Justices, 95 Me. 564 (1901),<sup>1/</sup> and in a previous opinion of this Office, Report of the Attorney General, 1951-1954 at page 56. Generally speaking, an office is one "of profit" if there is any compensation received over and above expenses of the office. The office of Treasurer of Aroostook County is clearly one of profit since the compensation is \$6,000 per year, plus expenses. 30 M.R.S.A. § 2. Also, generally speaking, an office is a "public office" or "civil office" under the State if the office is created by the Legislature, the powers and duties of the office have been legislatively defined, and the duties are to be performed independently for the benefit of the public. Since the office of County Treasurer is a statutorily created office and its powers and duties are also thus defined (30 M.R.S.A. §§ 601 et seq.), it is clear that the office of County Treasurer is an office or civil office under the State, as well as being an office of profit. Therefore, simultaneous tenure of office as a State Legislator and a County Treasurer, particularly in the circumstances set forth in your question, would be prohibited by either or both of the constitutional provisions cited above.<sup>2/</sup>

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- 1/ The cited Opinion of the Justices is most notable for the fact that 5 of the 8 Justices declined to answer the question. However, the answers given by the 3 Justices who felt that answers were necessary, are helpful here.
  - 2/ An opinion of this Office dated January 11, 1960, concluded, with limited rationale, that appointment of a Legislator to the position of County Treasurer would not conflict with Article IV, Part Third, Section 10 of the Constitution, in part because an increase in the salary of the position had been made during a preceding term of the Legislature. To the extent that the January 11, 1960, opinion conflicts with this one, it should be reversed. In addition, that opinion did not consider the question of compatibility of the offices under Article IV, Part Third, Section 11.

The foregoing opinion is intended to be limited to the specific offices in question, though the same rationale may be applicable to simultaneous tenure in the Legislature and in other county offices established by statute. The opinion should not be extended to municipal offices, unless the office also has State duties, since municipal government and offices have a different status than county government and offices vis-a-vis the State.

Please continue to call on us whenever you believe we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:jg