

# MAINE STATE LEGISLATURE

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Incomp. 76th OFFICIAL Legislator - County Treasurer  
Legislator's Appointment to OFFICE  
ME. CONST. ART 4, PT 3rd sec. 10

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January 6, 1978

Honorable Harry F. Rideout  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Rideout:

This letter is intended to further explain our opinion dated December 29, 1977 in which we answered your question of whether it would be legally permissible for a member of the 108th Legislature to also serve as the Aroostook County Treasurer. In that opinion we stated that simultaneous tenure of these two offices would be prohibited by the Maine Constitution, specifically by Article IV, Part Third, Section 11. In light of that opinion you have asked further whether it would be permissible for a member of the 108th Legislature to serve as Aroostook County Treasurer if the member resigned his legislative seat before appointment as Treasurer. The answer to this question is affirmative.

The Constitutional provision which would specifically govern this situation would be Article IV, Part Third, Section 10, of the Maine Constitution. That section reads:

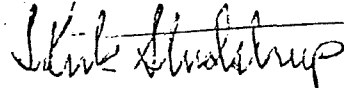
"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which requires the approval of the Legislature for appointment or which shall have been created, or the emoluments of which increased during such term,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

As we pointed out in our December 29 opinion, the office of Aroostook County Treasurer is a "civil office of profit under this State" and the emoluments of the office were increased during the first regular session of the 108th Legislature. However, upon further examination of this Constitutional provision, it is our opinion that the exception for offices as may be filled by elections by the people must be construed as including the office of County Treasurer since it is normally an elective office. 30 M.R.S.A. § 601.

In light of the foregoing, a member of the 108th Legislature may be appointed to the position of Aroostook County Treasurer pursuant to the provisions of 30 M.R.S.A. § 601, so long as the Legislator resigns his seat in the Senate or House of Representatives prior to taking office as Treasurer. This resignation would be necessary for the reasons stated in the December 29 opinion.

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

Sincerely,



S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:jg