

# MAINE STATE LEGISLATURE

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*Incorporated by statute - the same  
Conflict of Interest*

JOSEPH E. BRENNAN  
ATTORNEY GENERAL



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DEPUTY ATTORNEYS GENERAL

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

March 14, 1978

Honorable Edward L. Dexter  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Dexter:

I am responding to your request for an opinion of this office on the following question:

"May a member of the Maine Legislature also serve as selectman of his municipality if the selectman also performs the duties of tax assessor?"

The answer to your question is negative.

I am enclosing copies of previous opinions of this office which have consistently held that although the positions of legislator and selectman are compatible, the positions of legislator and tax assessor are not. I have reviewed these opinions to see if there are any more current statutes or case law which would require a change in our position. I must report that there does not appear to be any reason for a change and reaffirm our previous opinions.

Sincerely,

A handwritten signature in cursive script, reading "S. Kirk Studstrup".

S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:mfe

Enclosures

March 19, 1970

Honorable H. Sawin Millet, Jr.  
Dixmont  
Maine

Dear Representative Millet:

I would understand the question, as posed in your letter of March 13, 1970, to be: May a member of the State Legislature also serve, without conflict, in the position of municipal selectman, assessor and overseer of the poor?

The relevant law may be found in Article IV, § 11 of the Maine State Constitution wherein it states: "No member of Congress, nor person holding any office under the United States (post office excepted) nor office of profit under this State, justices of the peace, notaries public, coroners and officers of the militia excepted, shall have a seat in either House during his being such member of Congress, or his continuing in such office."

I am unable to discover any interpretation of this, or similar laws of the other states, which would have the effect of construing the position either of municipal selectman or overseer of the poor as "an office of profit under this state."

However, a past opinion of the Attorney General and a variety of judicial opinions point to the conclusion that a municipal assessor is not a purely municipal office but rather one where the officer is charged with a number of duties under state law for which he is entitled to compensation and must therefore come within the definition of "an office of profit under this state."

I have enclosed a copy of the opinion mentioned above. You might wish to survey a few of the relevant cases: Town of Frankfort v. Waldo Lumber Co., 128 Me. 1, 145 A. 241 (1929); Dollof v. Town of Gardiner, 148 Me. 176, 182, 91 A. 320 (1952); Talbot v. Wesley, 116 Me. 208, 211, 100 A. 937 (1917); and Rossire v. City of Boston, 86 Mass. 57, 58 (1862).

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It would therefore appear to be incompatible for a member of the State Legislature to hold any position which might include among its conditions the duties of a municipal assessor.

Respectfully yours,

JOHN E. QUINN  
Assistant Attorney General

JEQ/ec

*W. Farris*

December 17, 1948

Mr. Arthur T. Dickson  
6 B. Street  
Old Orchard Beach, Maine

Dear Mr. Dickson,

I have your letter of the 7th, asking if it is possible for a State Representative to run for a municipal office such as that of selectman.

In reply I will say that Section 11 of Article IV of the Constitution of Maine provides that no person holding any office under the United States or under this State, justices of the peace, notaries public and officers of the militia excepted, shall have a seat in either house of our legislature so long as he continues in such office.

The office of selectman is not a State office and is not incompatible. However, our court has held that a municipal assessor is a State officer, and a member of the legislature cannot be a member of the board of assessors at the same time.

Trusting that this gives you the information you desire,

Very truly yours,

Ralph W. Farris  
Attorney General

RWF:c

February 1, 1971

Representative David Ault  
House of Representatives  
State House  
Augusta, Maine

Re: Incompatibility/Selectman, Assessor

Dear Dave:

At your request, we have again reviewed our previous opinions directed towards the question of whether or not a member of the State Legislature may also serve, without conflict, in the position of municipal selectman and assessor.

It appears that we have previously ruled (March 6, 1923; February 20, 1926; March 3, 1932 and May 6, 1936) that the office of selectman is not incompatible with service as a member of the State Legislature.

We have previously ruled, however, that the office of municipal assessor and a member of the Legislature are incompatible (December 17, 1948 and March 19, 1970).

The basis of our several opinions was the language of the Constitution of Maine, Article IV, Part Third, Section 11, which states:

"No member of Congress, nor person holding any office under the United States (post officers excepted) nor office of profit under this State, justices of the peace, notaries public, coroners and officers of the militia excepted, shall have a seat in either House during his being such member of Congress, or his continuing in such office."

The office of selectman is not a state office and is not incompatible. However, a past opinion of this office and a number of judicial opinions point to the conclusion that a municipal assessor is not a purely municipal office but one where the officer is charged with a number of duties under the state law for which he is entitled to compensation and therefore must come within the definition of an office of profit under this state.

Representative David Ault

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February 1, 1971

We would therefore adhere to our previous positions that it would appear to be incompatible for a member of the state Legislature to hold any position which might include among its conditions the duties of municipal assessor.

Sincerely yours,

JON R. DOYLE  
Deputy Attorney General

JRD:mfe