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Compatibility of Offices Justice of the Peace / Deputy Sheriff

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AUGUSTA, MAINE 04333

May 17, 1978

James W. Gallagher
Assistant District Attorney
Lincoln County Courthouse
Wiscasset, Maine 04578

Dear Mr. Gallagher:

I have been asked to respond to your letter of April 25, 1978, to Attorney General Joseph E. Brennan. You have requested our opinion regarding whether there is an incompatibility between the offices of justice of the peace and deputy sheriff. You have correctly noted that, in the past, it has been our opinion that the two offices are incompatible under Article III § 2 of the Constitution of Maine. We adhere to that view.

In an early Opinion of the Justices, 3 Me. 484 (1825), the Maine Supreme Judicial Court addressed this specific issue. Said the Court, "[i]t seems that a justice of the peace belongs to the judicial department." 3 Me. at 485. The Court examined Article VI § 4 of the Maine Constitution (the section dealing with the tenure of judicial officers) which at that time provided that "all judicial officers except justices of the peace, shall hold their offices during good behavior, but not beyond the age of seventy years." The Justices stated clearly that ". . . the exception proves the judicial character of the justice [of the peace]." 3 Me. at 485. The language of Article VI § 4 is today somewhat different, but it still refers to "all judicial officers" and then deals specially with the tenure of justices of the peace. Accordingly, the reasoning of the Supreme Court that a justice of the peace belongs to the judicial department continues to apply today.

The Court in its Opinion, supra, further said that sheriffs and deputy sheriffs exercise their power in aid of the governor,^{1/} the chief executive department officer, and that "[t]here can be no question that sheriffs, deputy sheriffs and coroners are executive officers." 3 Me. at 486. The Court concluded that under the Maine Constitution the office of justice of the peace is incompatible with that of sheriff or deputy sheriff.

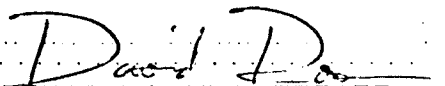
In Bamford v. Melvin, 7 Me. 14 (1830), the Court had occasion to reexamine the issue of whether the offices of deputy sheriff and

1/ See, e.g. 30 M.R.S.A. § 1001.

James W. Gallagher
May 17, 1978
Page 2

justice of the peace are incompatible. The Court stated that "[i]t will not be denied that a justice of the peace belongs to the judicial department." 7 Me. at 17. It concluded again that the two offices were incompatible under Article III§ 2 of the Maine Constitution. To the same effect, see Howard v. Harrington, 114 Me. 443, 445 (1916). See also Opinion of the Justices, 119 Me. 603 (1921).^{2/}

Very truly yours,



DAVID ROSEMAN
Assistant Attorney General

DR:jg

^{2/} The Court said that "[t]he office of Justice of the Peace is a judicial office" 119 Me. at 606.