

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Incorporated Office Selectman - School Committee

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

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

June 21, 1978

Honorable Donald M. Hall
R.F.D. 1
Dover-Foxcroft, Maine 04426

Dear Representative Hall:

I am responding to your oral request for advice from this office on the question of whether one person may simultaneously hold the positions of town selectman and member of the local school committee. A review of previous opinions of this office indicates that the office of town selectman has been considered incompatible with that of school committee member or member of a district board of directors on several occasions in the past. See: Opinions of the Attorney General May 1 and 15, 1936; April 18, 1942, May 15, 1968, February 17, 1972. We have reviewed these earlier opinions and find no reasons to change our opinion at the present time.

One of the primary reasons for finding an incompatibility between the offices of selectman and member of a school committee lies in the method in which school expenditures are approved. Title 20 M.R.S.A. § 853 provides that appropriations from the municipal treasury for school purposes can be made only upon the written order of the municipal officers (selectmen) and that this order may not be given until a bill of items has been approved by a majority of the members of the school committee. The statute appears to intend that the two functions be separate in order to maintain close scrutiny over educational expenditures. Therefore, if one individual were to perform both functions, the duties of the respective offices would conflict with each other and the offices are incompatible.

It should be noted that there are several types of administering bodies for the various types of school administrative units within the State. This opinion is intended to apply only to situations involving selectmen and members of municipal school committees. Any other situation involving different offices would have to be examined separately under the applicable statutes.

Sincerely,
S. Kirk Studstrup
S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

Incompatibility

May 1, 1936

A. A. Peterson
Detroit, Maine

Dear Sir:

In response to your letter of April 28, I have to inform you that apparently one and the same person cannot hold the two offices of member of the school committee and selectman, the two offices being incompatible.

Chapter 41 of the Public Laws of 1933, provides that, - "the committee may fill vacancies occurring between annual meetings, and the term of office of any member of the committee so chosen shall expire at the next annual meeting". It is also provided in said section that, - "whenever the remaining members fail to appoint a person to fill a vacancy, the same may be filled by election at a town meeting called for the purpose".

Trusting that the foregoing will give you the information you require, I am

Very truly yours,

Deputy Attorney General

SLF H

May 15, 1936

A. M. Drake, Chairman
Board Selectmen
Detroit, Maine

Dear Sir:

In response to your letter of May 10, I would call your attention to Section 18 of Chapter 19 of the Revised Statutes which provides that,-

"No money appropriated by law for public schools shall be paid from the treasury of any town except upon written order of its municipal officers; and no such order shall be drawn by said officers except upon presentation of a properly vouched bill of items, said bill of items having first been approved by a majority of the members of the superintending school committee and certified by the superintendent of schools."

It has been held in this state by the Court that offices are incompatible when persons holding same cannot perform all the duties of each office. Consequently, it is still my opinion that a person holding the office of selectman cannot at the same time lawfully hold the office of superintending school committee.

Very truly yours,

Deputy Attorney General

SLF H

OFFICE OF SELECTMEN, ASSESSORS AND
OVERSEERS OF POOR,
TOWN OF
DETROIT, MAINE

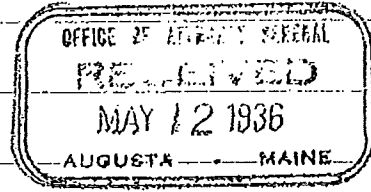
A. M. DRAKE, CHAIRMAN
S. C. GERRY, 2ND.
J. A. DAVIS, 3RD.

GEORGIE M. STONE,
TOWN CLERK AND TREASURER

May 10,

1936

Attorney General Chapman
Augusta, Maine



Dear Sir:

The present third selectman of this town, J. A. Davis, is also a member of the school committee. He is also one of the candidates for nomination for representative in the state legislature. A person appeared before me recently with an answer to a query he sent to your office as to whether it was legal for one person to hold at the same time both offices, selectman and member of the school committee. The answer signed by Mr. Fogg of your office gave me to understand that it was illegal to hold both offices at the same time. After careful search of the statutes, I failed to find any law which would uphold this ruling. Altho having no knowledge of law, I have reasoned that where the law is silent

the people are within the law
to proceed in such matters as the
there were just law. Will you please
advise me how the ruling, as I have
understood it, can be made? Further,
if it is illegal for Mr. Flavin to hold
the two offices, what would you
suggest be done?

We shall appreciate an
early reply.

Respectfully yours,
R. M. White, Chairman
Board of Selectmen,

P.O. Address:
P. O.
Pittsfield, Maine

4-18-1942

April 18, 1942

Hon. Raymond Thurston
Union, Maine

Dear Sir:

I have to inform you that one and the same person cannot hold office as a member of the school committee and selectman at the same time, the two offices being incompatible.

Very truly yours,

Sanford L. Fogg
Deputy Attorney General

SLF h

March 24, 1955

R. D. Stinchfield, Superintendent of Schools
Springfield, Maine

Dear Sir:-

We have your letter of March 23rd regarding the right of a selectman or plantation assessor to hold at the same time the office of school committee member.

This office is, of course, limited to advising the Governor and Council, the branches of the legislature, and heads of State departments on questions of law.

We do, however, keep a rather extensive record of rulings made over the years in regard to common-law and statutory incompatibility. A reference to this voluminous record shows that previous Attorneys General have ruled, on May 1 and May 15 of 1936 and again on April 18, 1942, that the offices above mentioned are incompatible, obviously due to the fact that the selectmen must approve the bills of the school committee.

Trusting that this will be of some assistance to you,

Very truly yours,

Roger A. Putnam
Assistant Attorney General

rap/c

CARROLL
DREW
LAKEVILLE

LEE
MACWAHOC

REED
SPRINGFIELD
PRENTISS

OFFICE OF SUPERINTENDENT OF SCHOOLS

UNION No. 110

R. D. STINCHFIELD, SUPT.

SPRINGFIELD, MAINE

TELEPHONE LEE 2543

March 23, 1955

Office of Attorney General
State of Maine
Augusta, Maine

Dear Sir :

I have been asked to write for information in re any existing statutes which might prohibit a selectman or plantation assessor from holding an office as school committee member.

If you have any knowledge concerning the above, I would appreciate having same.

I thank you.

Very truly yours,

R.D. Stinchfield
R.D. Stinchfield

RDS/

RECEIVED

MAR 24 1955

STATE OF MAINE
DEPT. ATTORNEY GENERAL
AUGUSTA

May 15, 1968

Asa A. Gordon, Director, School
Admin. Services
John W. Benoit, Assistant

Education
Attorney General

Compatibility of School Director's Office and Selectman's Office.

SYLLABUS:

Incompatibility of offices results when school administrative district director also holds office of selectman of member town.

FACTS:

Past opinions of the Office of the Attorney General have issued with conclusions that the Office of Selectman and the Office of School Committee member are incompatible. See opinions dated May 1, 15, 1936; April 18, 1942; and March 24, 1955.

A school administrative district director has inquired of the Department of Education whether he may hold the director's position together with the position of selectman of one of the towns which is a member of the school administrative district.

QUESTION:

May a person who holds the position of school administrative district director also serve as a selectman in a member town of the district sans incompatibility resulting?

ANSWER:

No.

REASON:

The Maine Statutes contain provisions evidencing a legislative intention that school administrative district directors not be, simultaneously, selectmen of a member town of the district. For example, 20 M.R.S.A. § 222 recites provisions for the dissolution of a school administrative district. Note that the district directors and the selectmen meet for the purpose of the preparation of a dissolution agreement. It seems inequitable that a director be required to represent both the district and his town relative

to any such dissolution agreement. Too, the same section also contains language establishing procedures for the recounting of ballots cast in a district dissolution vote. The law authorizes the municipal officers of any participating municipality to request a recount of district votes; and the board of directors is charged with the authority to resolve any question regarding disputed ballots. If a district director holds the office of selectman of a member town, he may, on the one hand, be a member of the town council advancing a dispute as to ballots; and, on the other hand, he may be a member of the very board charged with the decision of disposing of such disputed ballots. Continuing, it is noted that 20 M.R.S.A. § 302 vests the selectmen or municipal officers of a member municipality with the obligation of filling certain vacancies created on the board of directors. Surely, incompatibility would result in the event that a board of selectmen were to appoint one of their own members to the district's board. The statute, on this point, requires that the selectmen elect "a director from the municipality". There is no authority for the selectmen to elect one of their members to the board. Of course, this hypothetical situation is not dispositive of the question; but the tenor of the law is expressed.

Our position (that a selectman may not at the same time be a school administrative district director) concurs with the earlier expressions of this office issued on similar facts, i.e., that a selectman may not simultaneously hold the office of school committee member. The tenor of the several sections of the statutes relating to public education is that incompatibility results from a merger of the offices of selectman and school administrative district director in one person.

John W. Benoit
Assistant Attorney General

JWB/eh

JAMES S. ERWIN
ATTORNEY GENERAL



GEORGE C. WEST
JOHN W. BENOIT, JR.
JON R. DOYLE
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

February 17, 1972

Honorable Elmer H. Violette
Senate Chambers
State House
Augusta, Maine

Dear Senator Violette:

This is in response to your oral request for an opinion on the question whether a person may hold the position of director of a school administrative district and simultaneously be a member of the town council of a participating administrative unit of the district sans resulting in incompatibility due to conflict of interest. It is our opinion that the reference offices are incompatible.

In an opinion dated May 15, 1968, this office advised the Department of Education that incompatibility of offices results when a school administrative district director simultaneously holds the office of selectman of a member town of the district. A copy of that opinion is attached. We reaffirm the conclusion in that opinion and apply it to the question you pose, for the reason that members of a town council are municipal officers (1 M.R.S.A. § 72, sub-§12) within the purview of the statutes relating to school administrative districts (Title 20). I appreciate this opportunity to correct one of the reasons given to support the conclusion in the May 15, 1968 opinion, and to expand upon those reasons.

The second sentence of page two of the opinion referred to the fact that district directors resolved questions regarding

disputed ballots. Of course, the State Board of Education has the responsibility to settle ballot disputes in school administrative districts; not the school directors.* Although no incompatibility of offices results from settlement of questions of disputed ballots in a school administrative district, by reason of the fact a director is also a municipal officer, several other factors amply demonstrate how conflict does exist. Some of them are offered below for your consideration:

1. 20 M.R.S.A. § 222. In a district dissolution situation, municipal officers and district directors meet with the State Board of Education respecting preparation of a dissolution agreement. Equitably, the persons in a member municipality should be fully represented at such a meeting by both municipal officers and directors representing interests in their respective areas of expertise.**

2. 20 M.R.S.A. § 302. Certain vacancies on the board of directors are filled by municipal officers. If a municipal officer holds membership on the board of directors when filling such a vacancy, he has a hand in the composition of the very board he comprises. The lesser the number of directors representing a municipality, the greater is the potential for the exercise of right to affect the makeup of the board, while a member of the board.***

* Sometimes the State Board of Education is referred to in Title 20 as "the State Board of Education" and at other times as the "board". Sometimes the board of directors of a school administrative district are referred to in Title 20 as a "board". The paragraph of section 222 involved with recounts and disputed ballots uses language such as "the board", "the board office", etc.; not clearly signifying which one of two boards possessed standing to settle questions of disputed votes.

** Mentioned in the May 15, 1968 opinion.

*** Mentioned in the May 15, 1968 opinion.

3. 20 M.R.S.A. § 303: Reapportionment of representation of district directors involves a meeting of municipal officers, district directors and two representatives of the administrative unit chosen at large by the municipal officers. A vote of 2/3 of those present and voting is required to effect a reapportionment. Does the municipal officer-district director have one or two votes? Is he present at the meeting in two capacities? One? Is his vote (or votes) colored by reason of his dual role? Equitably at least, the voters in the municipality represented by a person acting in such a dual capacity are entitled to complete, independent representation on such an important question as reapportionment.

4. 20 M.R.S.A. § 305: What is written in sub-paragraph 3 above equally applies to meetings of municipal officials and school directors on the subject of reconsideration of the method of sharing costs and assessment and payment schedule regarding such costs.

I am sure other reasons could be given in support of the conclusion of incompatibility, but that would be cumulative only.

Trusting that this letter serves to answer your oral question, I remain,

Respectfully yours,

John W. Benoit, Jr.
JOHN W. BENOIT, JR.
Deputy Attorney General

JWB Jr./ec
Enclosure