

# MAINE STATE LEGISLATURE

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Mr. Court Art 10 p 1 3 Jan. 10

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

December 6, 1978

Representative Maynard Connors  
Franklin  
Maine 04634

Dear Representative Connors:

I am responding to your request for advice from this office concerning any legal bar to your holding an appointive position within the Executive Branch of Government. It is my understanding, on the basis of previous discussions we have had on the subject, that you have been interested in the position of Commissioner of Inland Fisheries and Wildlife.

During our previous conversations, it was indicated to you that it would not be possible for you to be appointed to the Commissioner position during the biennium of the 108th Legislature in light of your position as an elected Representative and the provisions of Article IV, Part Three, Section 10 of the Constitution of Maine. The constitutional provision 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."

With regard to the Commissioner of Inland Fisheries and Wildlife, it is my understanding that the emoluments of that position were increased during the term of the 108th Legislature and that appointment to the position requires approval by the Legislature. 12 M.R.S.A. § 1951. Therefore, the constitutional provision would prevent your appointment to the Commissioner position during the term of the 108th Legislature. I am enclosing copies of two previous opinions of this office which may assist in explaining this situation.

In closing, I should add that since you will not be a member of the 109th Legislature, the constitutional bar which prevented your appointment to the Commissioner position will no longer affect you after January 3, 1979, the date that the 109th Legislature is installed.

I trust this information is responsive to your request.

Sincerely,

A handwritten signature in cursive script that reads "S. Kirk Studstrup".

S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:mfe

Enclosures

Leg. (12/10/77). Pippin ...  
Mr. Const: Art 4 PT 3 rec 10

DM

JOSEPH E. BRENNAN  
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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333  
October 7, 1977

Representative Donald H. Burns  
Rte. 1, Box 485  
North Anson, Maine 04958

Dear Representative Burns:

This is in response to your request of October 3, 1977, for an opinion concerning Article IV, Part 3, Section 10 of the Constitution of the State of Maine. In particular you have asked:

1. May a Senator or Representative who has been elected to a current term of the Legislature be named to any civil office of profit which requires the approval of the Legislature for appointment?
2. May a member of the 108th Legislature be appointed to a commissionership in that each commissioner was granted a \$10.00 a week increase?

Discussion:

Article IV, Part 3, § 10 provides:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office for 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 of the Constitution was amended effective January 4, 1977. A key feature of the amendment was to add the phrase: "which requires the approval of the Legislature for appointment." The effect of this phrase is to change the situation which existed in previous years whereby legislators could be appointed to any appointive position where the emoluments of the position had not been raised during the term of the legislature.

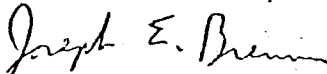
Rep. Donald H. Burns  
October 7, 1977  
Page 2

This section of the Constitution, on its face, indicates, in response to your first question that no Senator or Representative may be appointed to any civil office where that appointment requires legislative approval. The prohibition on such appointments extends to the entire term for which the legislator is elected, regardless of whether the legislator serves the full term or decides to resign in advance of completion of the term.

I assume your second question concerns an office not requiring legislative approval. No Senator or Representative of the 108th Legislature could be appointed to such a post inasmuch as the \$10.00 a week pay increase adopted by P. L. 1977, Chapter 579, § 1, represents an increase in the emoluments for such officials. The only exception is some officials which are subject to 2 M.R.S.A. § 7 and did not receive a raise.

I hope this information is helpful.

Sincerely,

  
JOSEPH E. BRENNAN  
Attorney General

JEB:jg

cc: Representative John Jensen  
John L. Martin, Speaker of the House  
Joseph Sewall, President of the Senate

*Legislative Appointment to Office  
Maine Const. Art 4, Part 3rd sec. 10*

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

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:

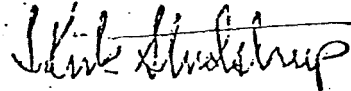
"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which requires the approval of the Legislature for appointment or which shall have been created, or the emoluments of which increased during such term, 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