

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
December 26, 1978

Lt. Bradford Small
Commanding Officer
Licensing Bureau
Maine State Police
Augusta, Maine 04330

Re: Private Investigator's License

Dear Lt. Small:

You have asked me whether a legislator is precluded from holding a private investigator's license by 32 M.R.S.A. §6061.

The converse of your question, whether a private detective can become a legislator, was addressed in a 1961 Attorney General's opinion. Our ruling at that time was that the constitutional provisions which place limitations on legislators would not disqualify a private detective from being a legislator. A.G. Rep., 1961-62, p. 28. The lack of a constitutional problem in 1961 does not resolve your question, however, because of the more recent statute to which you refer.

32 M.R.S.A. §6061 became effective in 1977 and the possibility of incompatibility between the positions of legislator and licensed private investigator has not been addressed since its enactment.

The statute appears as follows:

Individuals who derive plenary or special law enforcement powers from the State, or employees of the State or any of its political subdivisions, agencies or departments, or of any town, city or plantation, are not eligible for a license under this chapter [on licensing of private detectives].

32 M.R.S.A. §6061

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The broad sweep of the language of the statute appears to cover any public sector employee. There was little debate of note when the legislature passed it. One speech indicated a strong desire to ensure that police officers be prohibited from being licensed as private detectives, because the officers would have access to confidential information not available to anyone else. Maine Legislative Record, 1977, Vol. II, pg. 2043. Legislators do not have the access to confidential information that police officers have, but this deficiency does not let them escape the grasp of the statute. Its language clearly includes employees of any governmental subdivision of the State, and is certainly not restricted to only those employees with access to certain kinds of information.

The key to the question presented is whether legislators are "employees of the State" for the purposes of this statute, for they certainly do not derive "plenary or special law enforcement powers from the State."

"Employee" is defined in Title 5, Part 2, dealing with civil service as "any person holding a position subject to appointment by an appointing authority" (emphasis added). 5 M.R.S.A. §552(6). Legislators, of course, are elected and are not, even in the case of vacancies, subject to any appointing authority.

Legislators, however, may be considered employees for the purposes of some statutes, such as 5 M.R.S.A. §711, which categorizes them as unclassified employees, and 5 M.R.S.A. §1001(10), which considers them employees for purposes of the retirement laws.

Nevertheless, it is my opinion that, in the absence of a definition of "employee" which appears to contemplate this particular issue, the more general definition in 5 M.R.S.A. §552(6) should control. Thus, legislators are not "employees of the State" for the purposes of licensing private investigators.

Accordingly, your bureau should not, because of this statute, either refuse to grant private investigators' licenses to legislators or recall any already issued to them.

Please note that this opinion is limited solely to the issue presented as to private investigators, and in no way attempts to address any other questions involving the status of legislators.

Sincerely,



MICHAEL G. MESSERSCHMIDT
Assistant Attorney General
Department of Public Safety

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