

MAINE STATE LEGISLATURE

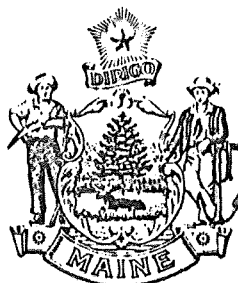
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79-134

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DEPUTY ATTORNEYS GENERAL

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

July 10, 1979

Edmond L. Pelletier
Chief of Police
Greenville, Maine 04441

Dear Chief Pelletier:

We would like to take this opportunity to respond to your written request, dated July 1, 1979, for an opinion from this office regarding the compatibility of the positions of justice of the peace or notary public and constable. These offices have been held to be incompatible both by courts, see, Pooler v. Reed, 73 Me. 129 (1882), and in opinions rendered by this office, Opinion of the Attorney General, March 15, 1968; Opinion of the Attorney General, March 25, 1966, copies of which opinions are enclosed herewith. The rationale behind such decisions and opinions is that the Constitution of the State of Maine prohibits a member of one branch of government from holding a position in, and exercising the power of, another branch. See, e.g., Opinion of the Attorney General, September 4, 1974. Further, under principles of common law, it has been stated that no one person can hold two governmental positions whose functions are, or might be, inconsistent. See, Howard v. Harrington, 114 Me. 446 (1916).

We hope this information addresses your concerns. If you have any further questions, please feel free to contact this office.

Very truly yours,

STEPHEN L. DIAMOND
Deputy Attorney General

SLD:mfe

Enclosures

March 15, 1968

Mr. Graham H. Bell
Buckfield
Maine

Dear Mr. Bell:

It has just been called to the attention of this office that you are attempting to hold the offices of Notary Public, Justice of the Peace, and Constable of the Town of Buckfield. The positions of Notary Public and Justice of the Peace are incompatible with that of a constable. You cannot hold all three offices. This fact was established by the case of Pooler v. Reed, 73 Me. 129. In that case the court said:

"His appointment to an acceptance of the office of Justice of the Peace, after his election and qualification as constable, must be held to be a surrender of the office of constable. Stubbs v. Lee, 64 Me. 195."

According to the records of the Secretary of State, you were commissioned a Notary Public and a Justice of the Peace on July 17, 1963. I understand that you were appointed and qualified as a constable in June, 1966; possibly earlier, but at least you were appointed at that time. Your appointment as a constable having come later than your commission as a Notary Public and Justice of the Peace means that you are duly qualified as a constable but are no longer a Notary Public or Justice of the Peace.

You must cease from acting as a Notary Public or Justice of the Peace.

Very truly yours,

George C. West
Deputy Attorney General

GCW:H
cc: Doris Hayes

March 25, 1966

Mr. Charles Althenn
Wayno
Maine

Dear Sir:

It has just been called to the attention of this office that you are attempting to hold both the office of Notary Public and Constable. These two positions are incompatible and you cannot hold both of them. This fact was established by the case of Pooler v. Reed, 73 Me. 129. In that case the court said:

"His appointment to an acceptance of the office of Justice of the Peace, after his election and qualification as constable, must be held to be a surrender of the office of constable. Stubbs v. Lee, 64 Me. 195."

According to the records of the Secretary of State, you qualified as a Notary Public October 6, 1961. If you have been appointed constable since that date, you are no longer a Notary Public and should not perform functions in that capacity.

If, on the other hand, your appointment as constable was prior to that date, then you are no longer a constable and should not perform duties of that office.

It is highly improbable that you would have been appointed a constable prior to that date without having been reappointed. It would appear that probably your appointment and qualification as a constable was subsequent to October 6, 1961, so that probably you are a duly qualified constable but are not a duly qualified Notary Public.

Mr. Charles Althenn

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March 25, 1966

I felt I should advise you so that you will not perform acts which might occasion troubles and problems for you.

Very truly yours,

George C. West
Deputy Attorney General

GCW:H