

# MAINE STATE LEGISLATURE

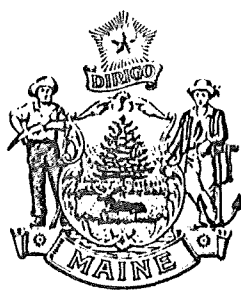
The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



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

79-135

RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

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

July 10, 1979

David Cole  
Town Manager  
China, Maine 04926

Dear Mr. Cole:

We would like to take this opportunity to respond to your oral request for an opinion from this office regarding the compatibility of the positions of notary public and constable. You should note that ordinarily this Office would not issue a formal legal opinion on a request such as yours because it does not fall within the statutory provision under which we are authorized to issue such opinion. 5 M.R.S.A. § 195. We have, however, researched this question a number of times and thus are able to supply you with the requested information.

The offices of notary public and constable 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 are, of course, aware of the limited way in which you exercise your constabulary power; that is, only for the posting of the warrant for the town meeting pursuant to 30 M.R.S.A. § 2052. A similar argument was made to the court and rejected in the case of Stubbs v. Lee, 64 Me. 195 (1874), in which the court found that the offices of deputy sheriff and "trial justice" were incompatible.

Hence, even in light of your limited use of your powers as a constable, we remain of the opinion that the offices of notary public and constable are incompatible.

It should be noted, for your information, that 30 M.R.S.A. § 2052, the statute dealing with the requirements of the warrant for a town meeting, contains an alternative provision allowing the warrant to be directed "to any person by name . . ." and allowing that named person to post the warrant. 30 M.R.S.A. § 2052(3), (4). Hence, you need not be a constable in order to post the warrant, so long as it designates you by name as the person who is to notify the voters.

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

Very truly yours,

*Stephen L. Diamond*  
STEPHEN L. DIAMOND  
Deputy Attorney General

SLD:mfe

Enclosure

March 15, 1968

Mr. Graham E. 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  
Wayne  
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

-2-

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