

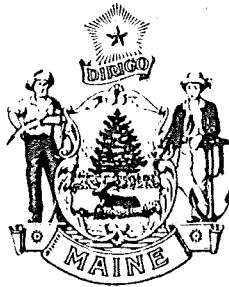
MAINE STATE LEGISLATURE

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)

RICHARD S. COHEN
ATTORNEY GENERAL



79-198

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

November 16, 1979

*See correction
on second letter
in book,*

Honorable Harry L. Vose
29 Washington Street
Eastport, Maine 04631

Dear Representative Vose:

You have posed a number of questions to this office dealing with the broad issue of the power of a municipality to bar its employees from serving as members of the municipality's governing body.^{1/} More specifically, you have asked whether a teacher hired by a municipal school committee is a city employee and whether there is any state statute either prohibiting a city employee from serving on a city council, or mandating that a municipal employee be allowed to serve on a city council. Finally, you have asked whether, under the Home Rule amendment, a municipality may enact, as part of its charter, a provision prohibiting municipal employees from serving on the city council.^{2/}

I.

The first question you pose is whether a school teacher hired by the Eastport School Committee is a City employee. Insofar as the answer to this inquiry depends upon an interpretation of the Eastport City Charter, we are unable, for the reasons stated previously, to resolve this issue. We have, however, determined that there are no existing state statutes which would prevent the City of Eastport from defining or treating a school teacher in an Eastport school as a City employee for purposes of precluding teachers from serving on the city council.

-
- ^{1/} As used in this opinion, the term "governing body" includes, but is not limited to, a town's board of selectmen or council and a city council.
- ^{2/} Some of the questions you have raised involve interpretation of the Eastport City Charter. Since we believe it would be inappropriate, under 5 M.R.S.A. § 195, for us to issue an opinion construing a municipal charter, we must decline to answer those questions.

We understand that the Eastport school system is part of a school union, organized pursuant to 20 M.R.S.A. § 521, et seq. Under such an organizational plan, as distinguished from that of a school administrative district or a community school district, teachers in a municipal school can be characterized as employees of the school committee and therefore of the municipality and such characterization would not be inconsistent with state law.^{3/} Nor is there anything in the general state statutes which would prevent the municipality from making such a characterization. Thus, we conclude that the City of Eastport may, without repugnance to state law, define or treat teachers in City schools as municipal employees. As stated above, however, whether or not the City has done so depends upon the intent behind the relevant charter provisions.

II.

The second question which you have posed is whether existing state statutes either prohibit municipal employees from serving on a municipal governing body or mandate that such employees be allowed to serve. We answer both questions in the negative. There are no specific statutes which either prohibit a municipal employee from serving on the municipality's governing body or require that he be permitted to do so.

There are, of course, provisions governing areas of conflict of interest for municipal officers. 30 M.R.S.A. §§ 1906, 2251. These do not appear, however, to bar a municipal employee from becoming a member of a municipal governing body, provided that that employee abides by the conflict of interest rules set out in those sections.

We found only one statute which might be viewed as mandating that municipalities permit municipal employees to be members of their governing bodies. 30 M.R.S.A. § 2251(4), in its last paragraph, provides as follows:

This subsection shall not prohibit a member of a city or town council or a member of a quasi-municipal corporation who is a teacher from making or renewing a teacher employment contract with a municipality or quasi-municipal corporation for which he serves.

30 M.R.S.A. § 2251(4)

A review of the statutory history of this provision, however, indicates clearly that the purpose underlying its enactment was to

^{3/} Along these lines, it may be helpful to examine the School Union agreement in order to determine how it defines teachers. Even if it defines teachers as employees of the union, however, such a definition would not necessarily be controlling over the city charter because it would relate solely to the relationship between the teachers and the Union under that agreement.

permit teachers who were allowed, by local charter, to become members of the local governing body, to benefit from any increases in wages or benefits negotiated on behalf of all teachers for that locality. 2 Me. Legis. Rec. B 2030 (1975) (remarks of Representative Carpenter). In effect this subsection negates the rules of conflicts of interest codified in section 2251 for the limited purpose of allowing public school teachers who are already members of a governing body to receive benefits to which their fellow teachers become entitled as a result of negotiation with the local governing body of the schools.

The specific question of whether this particular amendment would have the effect of superseding local charter provisions prohibiting city employees, including teachers, from serving on local government boards, was a subject of legislative debate, and the enactment, in its final form, was clearly intended not to have this effect.^{4/} Id. Hence, this section has no effect on the power of a municipality to bar teachers or other municipal employees from serving as members of its governing body.

III.

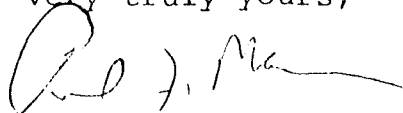
The final question you have posed for answer by this office is whether, under the so-called Home Rule amendment, Me. Const. art. VIII, part 2, § 1, a municipality may, by charter or charter amendment, prohibit city employees from serving on the municipal governing body. We answer in the affirmative. This particular issue has never been ruled upon by the Maine courts, nor have we addressed it in past opinions. We have, however, in recent opinions, viewed the Home Rule amendment as having bestowed upon municipalities full powers of local self-government on matters of municipal concern. See Opinion of the Attorney General, 79-93 (May 10, 1979). Since questions relating to the election of municipal governing bodies must be considered matters of municipal concern, it is our opinion that municipalities have the power to enact charters or charter amendments regulating this area, in the absence of specific, pre-emptive statutes. Here, we have found no such contrary statutes, and we therefore conclude that it is within the power of a municipality to enact charter provisions preventing municipal employees, including teachers who may be so defined, from serving as members of municipal governing bodies.

^{4/} A review of the voluminous legislative history of this statute indicates clearly that it was the intent of the original bill that local charter provisions precluding municipal employees from serving on municipality governing bodies be superseded by it. See L.D. 1339 (1975), Statement of Fact; 1 Me. Leg. Rec. B 701 (1975) (remarks of Representative Carpenter).

Page 4

We hope this information addresses the concerns voiced in your opinion request. If you have any further question, please feel free to contact this office.

Very truly yours,

A handwritten signature in dark ink, appearing to read "P. F. Macri", with a stylized flourish at the end.

PAUL F. MACRI
Assistant Attorney General

PFM/ec