

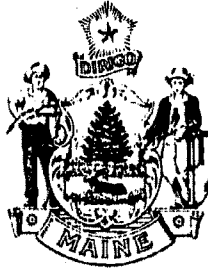
MAINE STATE LEGISLATURE

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RICHARD S. COHEN
ATTORNEY GENERAL



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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

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DEPUTY ATTORNEYS GENERAL

80-13

January 22, 1980

Ray L. Carpenter, Selectman
Town of Dayton
R.F.D. #3
Biddeford, Maine 04005

Dear Mr. Carpenter:

The Attorney General has referred your request for an opinion to me and I am taking this opportunity to respond. You have requested an opinion of this office with regard to the compatibility of the positions of Deputy Chief of Police and Selectman of a town. We are of the opinion that these two offices are incompatible because of the inability of the holder to discharge the duties of each office in each instance. Howard v. Harrington, 114 Me. 443 (1960). This is in line with a previous opinion of this office dated February 5, 1974, a copy of which I am enclosing herewith for your information.

As you will note from that opinion, acceptance of an incompatible office automatically vacates the office previously held. It is therefore our opinion that you may not remain a policeman, even on leave of absence, while you serve as selectman of the Town of Dayton. Your acceptance of a selectman position automatically vacates your position as a police officer.

We hope that you find this information useful. If you have any further questions, please feel free to contact this office.

Very truly yours,

PAUL F. MACRI
Assistant Attorney General

PFM:mfc

Enclosure

February 5, 1974

Mr. Raymond G. Champagne
2 Holden Street
Sabattus, Maine 04280

Dear Mr. Champagne:

This will acknowledge receipt of your letter of February 2 inquiring as to whether or not a full-time police officer can hold the office of selectman in the town in which he is employed and resides. The answer to your question is that he cannot hold both offices unless there is something in the municipal charter to the contrary.

Normally, the selectmen will hire, fire and determine the compensation of a police officer. This would mean that if you were a selectman you would be involved in hiring yourself, firing yourself and determining your compensation. This, of course, is not legal. If, however, you have a Police Commission which does the hiring, the firing, and determining the compensation, then you would be able to be a selectman and police officer.

The reason for such a ruling is because of a Maine case, Howard v. Harrington 114 Me. 443 (1916). In that case they indicated that two officers are incompatible when the holder cannot in every instance discharge the duties of each officer. They further stated that the acceptance of an incompatible office automatically vacates the office held at that time.

Very truly yours,

George C. West
Deputy Attorney General

GCW:H