

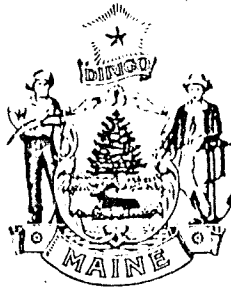
MAINE STATE LEGISLATURE

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80-19

January 31, 1980

Honorable John L. Tuttle, Jr.
House of Representatives - Seat 91
State House
Augusta, ME 04333

Dear Representative Tuttle:

You have asked whether a person may hold simultaneously the offices of county commissioner, town clerk and town tax collector. It is our opinion that these offices are compatible.

To determine whether certain governmental offices are compatible, we must consider the pertinent constitutional provisions, statutes and common law rules. Three provisions of the Maine Constitution are relevant to our inquiry. The first two provisions, Article III, Sections 1 and 2, deal with the separation of power. These sections forbid any person from holding an office in more than one branch of government. Since we view the offices of county commissioner, town clerk and town tax collector as being offices of the executive branch we see no separation of power violations. The third constitutional provision, Article IX, Section 2, forbids a person from holding certain enumerated offices simultaneously. None of the offices includes those which are the subject of this opinion.

The important statutory law relating to your request is found at 30 M.R.S.A. § 51:

"No person holding the office of county commissioner shall at the same time hold either the office of mayor or assessor of a city or of selectman or assessor of a town. No county commissioner shall, during the term for which he shall have been elected and for one year thereafter, be appointed to any civil office

of profit or employment position of the county, which shall have been created or the compensation of which shall have been increased by the action of the county commissioners during such term."

As you can see, the only municipal offices which are declared to be incompatible with the office of county commissioner are those of mayor, selectman and assessor. Similarly, we can find no other statute which prohibits a town clerk and a tax collector from serving as a county commissioner. See, e.g., 30 M.R.S.A. § 2060.

Finally we turn to common law principles relating to incompatibility. It has been written that:

"At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices, and the holding of two governmental positions that may interrelate is not per se incompatible. A public officer is, however, prohibited from holding two incompatible offices at the same time, as a matter of public policy, in order to assure not only the actuality of undivided loyalty, but also the appearance thereof. Even though specific constitutional and statutory provisions furnish no bar to the holding of particular offices or positions at the same time, the common law must be considered in determining whether there is any incompatibility therein, and the court may be bound by both statutory provisions and by the common law." 67 C.J.S. Officers § 27. See, also, Howard v. Harrington, 114 Me. 443 (1916).

In order to determine whether these offices are incompatible under common law we must focus our attention on whether the duties of one office can be performed only by neglecting to perform the duties of the other office. Howard v. Harrington, supra, at 449.

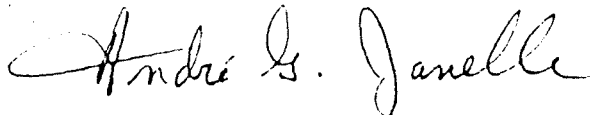
Our review of the applicable statutes leads us to conclude that no conflict would arise between the duties of a tax collector and a town clerk or between the duties of a town clerk and a county commissioner. There is an interrelationship, however, between the duties of a tax collector and a county commissioner. That interrelationship surfaces in the area of taxation.

The county commissioners are charged with apportioning the county tax among the municipalities of a county. They issue their warrants to the local assessors requiring them to assess the sum apportioned. The tax collector is required to assess the tax. 30 M.R.S.A. § 254. It is our opinion that this relationship between collector and county commissioner does not interfere with the discharge of the duties of each respective office since: (a) the county sheriff and county treasurer are charged with the collection of delinquent county taxes owed by municipalities, 36 M.R.S.A. § 891; and (b) the tax collector is liable to the inhabitants of his town for his neglect of duty, 36 M.R.S.A. § 893. Furthermore, a tax collector is not subordinate to or subject to removal by the county commissioners.

Finally, county commissioners have jurisdiction to hear local property tax abatement appeals if the municipality has not adopted a board of assessment review or is not a primary assessing area. 36 M.R.S.A. § 844. It could be argued that a conflict of interest would arise if a county commissioner, who is a local tax collector, participated in an abatement appeal dealing with an assessment made by the assessors of his municipality. Even if a conflict does arise in this one situation, it is our view that such a minor conflict would lead a court to conclude that the offices of local tax collector and county commissioner are incompatible as a matter of law.

If we can be of any further assistance, please do not hesitate to contact this office.

Sincerely,



Andre G. Janelle
Assistant Attorney General

AGJ:cc