

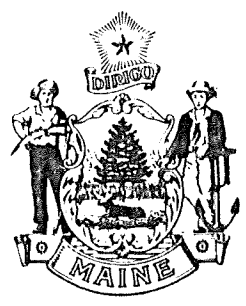
# MAINE STATE LEGISLATURE

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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

February 8, 1980

Honorable Harold Hanson  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Hanson:

You have requested an opinion of this office in regard to the question of whether an employee of a town may run for selectman of that town, and, if elected, may serve as a selectman while remaining an employee of the town. We answer the first question, whether he may run, affirmatively, subject to review of local provisions; but we answer the second, whether he may serve simultaneously as an employee of the town and as a selectman, in the negative.

For purposes of analysis, we will consider the questions presented in reverse order. Having found no constitutional incompatibility between the office of employee of a town and a town official, such as a selectman,<sup>1/</sup> the question becomes whether there is any common law incompatibility between these two positions. We find that there is. In our opinions, we have taken the position that a person may not simultaneously serve as a selectman and an employee who would be controlled by the selectman. See, e.g., Opinions of the Attorney General, January 22, 1980; February 5, 1974 (copies of which are attached hereto). The rationale of these opinions is that incompatibility arises when the holder of two positions cannot discharge the duties of each. See Howard v. Harrington, 114 Me. 443 (1916). In the situation

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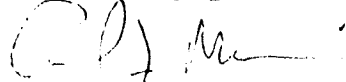
1/ Me. Const., art. III, § 2; art. IX, § 2.

of an employee and selectman, it is clear that the selectman would have power over the employee in the areas of hiring, firing, and determining compensation. Hence, we find that these two offices are incompatible.<sup>2/</sup>

What are the consequences of this incompatibility on the ability of the employee to run for selectman? We have found no state law which prevents an employee of a municipality from running for the office of selectman. There may, however, be existing ordinances of the town which would prohibit employees of the town from involving themselves in political activity and which might specifically prohibit an employee from running for a municipal office. A search of the ordinances should be made to determine whether such an ordinance exists. Assuming that no ordinance prohibits the employee from running for selectman, however, the incompatibility of the positions would prevent the employee from serving as selectman without vacating his position as a town employee. Hence, should the employee run for selectman and be elected, he should resign his employment by the town. In any event, as a technical matter, his election as selectman will automatically vacate his employment position.

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

Very truly yours,



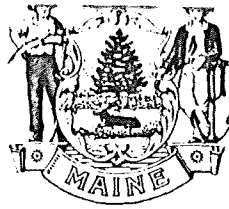
PAUL F. MACRI  
Assistant Attorney General

PFM/ec  
Enclosures

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<sup>2/</sup> We take no position with regard to the question of whether 30 M.R.S.A. § 2251, which governs conflicts of interest in contractual situations for municipal officials, applies in an employment situation. While there is some authority that that section would apply and would create a conflict of interest where the selectman was also an employee of the town, see Davis v. Doyle, 323 S.W.2d 202 (Ark. 1959); Revis v. Harris, 243 S.W.2d 747 (Ark. 1951), a determination of this question is not critical to the result reached in this opinion. Furthermore, section 2251 does not per se prevent a selectman from being an employee of the town but merely governs the consequences where a municipal official is pecuniarily interested in contracts of the municipality.

RICHARD S. COHEN  
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80-13

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

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,

A handwritten signature in dark ink, appearing to read "Paul F. Macri".

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