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

February 26, 1980

Honorable Harry L. Vose
House of Representatives
State House
House Seat 28
Augusta, Maine 04333

Dear Representative Vose:

You have requested an opinion of this Office regarding the propriety of the Governor's appointing Mr. Ralph Ray of Eastport, Maine to complete the unexpired term of Washington County Commissioner Benjamin Humphries. The specific problem cited is whether there is any incompatibility or other bar to Mr. Ray's taking this position by appointment in light of Mr. Ray's employment as a teacher at the Washington County Vocational Technical Institute (Calais Vocational School).

We answer this question in the negative. From the standpoint of incompatibility of offices, we can find no incompatibility between the office of County Commissioner and teacher in a vocational technical school. Clearly, under Me. Const., art. IV, pt. 3, § 1 and art. IX, § 2, there is no constitutional incompatibility between these two offices. 30 M.R.S.A. § 51 sets out certain offices which are held to be incompatible with the office of County Commissioner, but the office of teacher at a vocational technical institute is not among those listed.

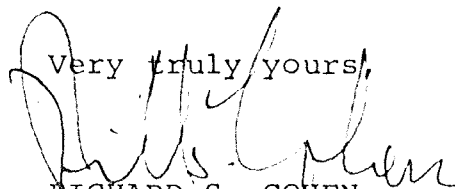
Finally, we must assess whether there is any common law incompatibility between the two offices. The test for common law incompatibility is essentially one of repugnance. See Howard v. Harrington, 114 Me. 443 (1960). The rationale underlying this decision is that incompatibility arises when the holder of two positions cannot discharge the duties of each. Our understanding of the duties of the two positions here at issue leads us to conclude that there is no common law incompatibility between them. We understand that the Vocational Technical Institute

is under the supervision of the State Board of Education and that, as a teacher at that Institute, Mr. Ray is an unclassified employee of the State. It is our understanding that he is hired and controlled by the State Board of Education. Hence, we see no conflict with regard to payment, tenure or other area regarding employment as between these two positions.

We should finally note that the statutes of the State of Maine control whether or not a State employee may run for a political office. For purposes of this opinion, we are assuming that gubernatorial appointment to fill an unexpired term does not constitute "running" for an office and hence that these laws do not apply. We therefore take no position with regard to the question of whether or not Mr. Ray could run for the office of County Commissioner at the end of the unexpired term while still remaining an employee of the State.

I hope that this resolves the issue which you presented to us. If you should have any other questions, please feel free to contact this office.

Very truly yours,



RICHARD S. COHEN
Attorney General

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