

MAINE STATE LEGISLATURE

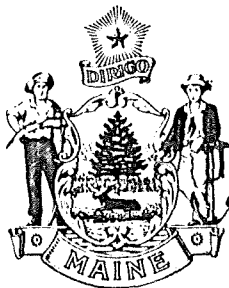
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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 28, 1980

Honorable David Marshall
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Marshall:

You have asked for an opinion from this office regarding the question of the constitutionality of a section of the charter of the Town of Millinocket.

We have reviewed section 202 of Article 2 of the charter of the Town of Millinocket which reads, in pertinent part, as follows:

They [councilmen] shall hold no office of emolument or profit under the town charter or ordinance.

The question posed is whether this is constitutional with regard to the Chief of Police of the Town of Millinocket. We believe that it is constitutional. There is substantial authority that such limiting provisions in a charter are enforceable and enforced. A New Jersey case appears quite closely on point. In Kaufman v. Pannuccio, 295 A.2d 639 (N.J. Super. 1972), it was held that a police lieutenant could not also serve as a member of the town council of the town in which he was employed under a charter provision similar to the one in question. See generally 3 McQuillan, Municipal Corporations, § 12.66 at 288.

We would also indicate that while the charter provision in question prevents the Chief of Police from serving on the Town Council while remaining Chief of Police, it does not appear to prevent him from running for that office and vacating the office of Police Chief if elected.

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

Sincerely,

Stephen L. Diamond

STEPHEN L. DIAMOND
Deputy Attorney General

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