

# MAINE STATE LEGISLATURE

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

December 8, 1980

H. W. McKowen, Executive Director  
Maine Insurance Advisory Board  
State Office Building  
Augusta, Maine 04333

Dear Mr. McKowen:

You have asked whether a person may serve as a State Legislator and a member of the Maine Insurance Advisory Board. It is our opinion that an individual may not hold these two offices simultaneously.

Article III, § 2 of the Maine Constitution prohibits a Legislator from exercising any of the powers properly belonging to the Executive Department. Accordingly, the answer to your question turns upon whether a member of the Board would be considered to be exercising such powers.

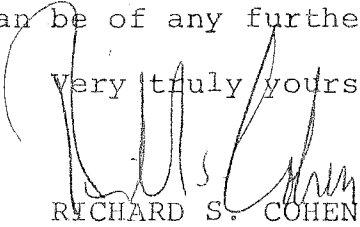
A general review of the applicable statutes [5 M.R.S.A. §§ 1725-1736] reveals that the appointment and removal of Board members lies solely in the hands of the Governor. The Board's duties and responsibilities are of an important character involving the exercise of governmental discretion. These duties include reporting annually to both the Governor and the Commissioner of Finance and Administration on insurance as it applies to all State property and activities. The Board is also called upon to purchase insurance for State agencies and to set premiums for the State's reserved fund for self-insured retention losses. Because a Board member is called upon to exercise his independent judgment and discretion in carrying out these important executive duties, there is no doubt that he is exercising executive powers.

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In light of the constitutional prohibition against holding legislative and executive offices simultaneously, a person may not be a member of the Maine Insurance Advisory Board while serving in the State Legislature.

Please let me know if I can be of any further service.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. S. Cohen', written over the typed name.

RICHARD S. COHEN  
Attorney General

RSC/ec

cc: Representative Robert Dillenback