

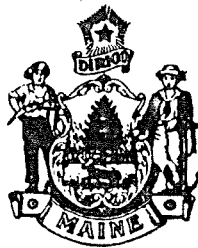
# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



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

March 9, 1981

Mary Ann Lynch  
Apointment Coordinator  
Office of the Governor  
State House  
Augusta, Maine 04333

Dear Ms. Lynch:

This will respond to your inquiry as to whether an individual may simultaneously serve as county treasurer and town manager of a town within the same county. It is our opinion that the holding of these two positions would violate the common law doctrine of incompatibility of offices.

Since the Law Court's decision in Howard v. Harrington, 114 Me. 443 (1916), the principles articulated in that case have governed questions of this nature. As those principles have been set out in numerous prior opinions of this office, there is no need to repeat them here. It should suffice to point out that the doctrine embodies a public policy against holding two offices whose responsibilities may conflict. Furthermore, the doctrine applies when the "holder cannot in every instance discharge the duties of each [office]." Howard v. Harrington, supra at 446 (emphasis added).

Given their rather general nature, the principles set forth in Howard v. Harrington are easier to state than to apply. When dealing with a specific problem, it is necessary to examine the offices and to make a judgment as to whether any of their duties conflict in such a manner as to create the possibility that the office holder might be precluded from fully discharging the responsibilities of each position.

In this instance, we may look initially to a prior, "unofficial" opinion of this office which concluded that the positions of county treasurer and member of the board of selectmen of a town within the same county are incompatible. The basis for that conclusion lies in the responsibilities of the county treasurer, under 30 M.R.S.A. §751, to enforce the county tax against municipalities.

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1/ A copy of that "unofficial" opinion, dated February 5, 1968, is enclosed.

It was reasoned that if a dispute arose over the amount of the tax, it would be the duty of the treasurer to seek payment of the disputed amount and the duty of the selectman to resist such payment. The antagonism between these two roles seems apparent.

It is our opinion that the considerations which preclude a selectman from serving as county treasurer apply with equal force to a town manager. To explain this conclusion it is necessary to briefly examine the role of a town manager under the Maine statutes. The manager serves as the "chief executive and administrative official" of the town, 30 M.R.S.A. §2317(1)(A), and exercises virtually all of its administrative and executive powers. 30 M.R.S.A. §2316. In that capacity, he has the authority to appoint, subject to confirmation by the board of selectmen, supervise and control the heads of town departments and to remove these individuals for cause. 30 M.R.S.A. §2317(1)(E) and (N).<sup>2/</sup> This authority extends to those municipal officials who are responsible for the collection of the county tax and its payment to the county treasurer.

In light of the manager's central role in town government, we believe that if a manager were also to serve as county treasurer, he would encounter the same problems as exist for a selectman. Put most simply, in his capacity as county treasurer, he would have the obligation to enforce the county tax against the entity whose interests he is required to defend as its chief executive and administrative official. In our view, this would violate the mandate of Howard v. Harrington that the holder of two offices be able to discharge the duties of each in every instance.

I hope this information is helpful. Please feel free to contact us if we can be of any further service.

Sincerely,

*Stephen L. Diamond*

STEPHEN L. DIAMOND  
Deputy Attorney General

SLD:jg  
Enclosure

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<sup>2/</sup> To some extent, the powers of the manager over other town officials exceed those of the selectmen, in that 30 M.R.S.A. §2316 requires the board of selectmen to "deal with the administrative services solely through the town manager and . . . not [to] give orders to any subordinate of the manager, either publicly or privately."

February 5, 1968

R. C. Blake, Sr.  
County Treasurer  
Hancock County  
Ellsworth, Maine

Dear Mr. Blake:

In answer to your letter of January 30, we have arrived at the conclusion that the offices of County Treasurer and a member of the Board of Selectmen of a town within said county are incompatible. This is not to be considered an official opinion of the Attorney General's office. Rather, it is an unofficial answer to your inquiry.

At this point, it might be well to advise you that there is no constitutional or statutory prohibition in the State of Maine from holding these two offices. The incompatibility which does arise finds its origins in the common law.

In the case of Howard v Harrington 114 Me. 443 (1916) the Law Court of the State of Maine discusses at some length the problem of incompatibility as it has evolved from the common law. The Court begins by saying that "two offices whose functions are inconsistent are regarded as incompatible." Citing from other cases, the Court continues: "two offices are incompatible when the holder cannot in every instance discharge the duties of each." "incompatibility must be such as arises from the nature of the duties, in view of the relation of the two offices to each other." "the functions of the two must be inconsistent as where an antagonism would result in the attempt by one person to discharge the duties of both offices." "the true test is whether the two offices are inconsistent in their natures, in the rights, duties or obligations connected with or flowing out of them."

A cursory examination of Title 30 of the Maine Revised Statutes of 1964 reveals that such inconsistency could develop. For example, under 30 M.R.S.A. § 254 county tax is apportioned upon the towns. Under 30 M.R.S.A. § 751 the County Treasurer may enforce payment of taxes. It is clear that if one man were County Treasurer and a member of the Board of Selectmen of a town within said county, the possibility for a conflict of interest is great. Were there any disagreement as to whether or not the tax was correct which governmental unit would such an individual support?

I hope this will answer your question. I must again emphasize that this is an unofficial answer.

Very truly yours,

Warren E. Winslow, Jr.  
Assistant Attorney General

WEW, Jr./mf