

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

June 26, 1981

Honorable Gennette M. Ingraham
45 Court Street
Houlton, Maine 04730

Dear Representative Ingraham:

You have requested an opinion from this office as to the propriety of your becoming employed as secretary to the District Attorney for Prosecutorial District Number 8 while a member of the Legislature. We see no constitutional problems with your assuming such a position, nor do we think that the offices of legislator and secretary to the District Attorney are incompatible.

The Maine Constitution provides as follows:

No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which requires the approval of the Legislature for appointment or which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people.

Me. Const., art. IV, pt. 3, § 10.

It further prohibits members of the Legislature from holding an "office for profit under this State" Id., § 11. We do not think either of these provisions comes into play because we do not think that the position of secretary to the District Attorney is either a "civil office of profit" or an "office of profit." A previous opinion of this office has stated that something more than mere employment is necessary for a position to be an "office" of the State. Opinion of the Attorney General 79-195 (Nov. 9, 1979). The holder of an "office" is distinguished from an employee on the

basis that the former is authorized to exercise a portion of the sovereignty of the State. We do not think that the secretary to the District Attorney exercises such sovereignty. We therefore conclude that the Maine Constitution does not bar your employment in that position.

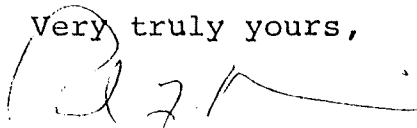
A second problem is whether the office of legislator and the position of secretary to the District Attorney are incompatible. Incompatibility is defined as the holding of two offices whose powers and duties are or may be inconsistent. See generally Howard v. Harrington, 114 Me. 446 (1916). If a person cannot wholly fulfill the duties of both offices without a conflict, they are incompatible. While we are not aware of the specific duties of the secretary to a District Attorney, assuming them to be the same as the ordinary duties of a legal secretary, we do not think they conflict with the present duties of a legislator.

We would point out that the Legislature makes numerous decisions which affect District Attorneys and counties financially. Since these decisions will have an impact on you in your capacity as an employee of a District Attorney and a county, we think it would be appropriate for you to refrain from voting on such issues or from influencing their outcome. Such restraint would be consistent with the statute governing legislative conflict of interest, 1 M.R.S.A. §§ 1011-1021. While this statute probably does not apply to this specific situation, the principles it embodies may be extended by analogy to avoid the appearance of impropriety. See 1 M.R.S.A. § 1011.

In conclusion, we repeat that we find no incompatibility or constitutional bar in your assuming the position of secretary to the District Attorney of Prosecutorial District #8. We do, however, believe that at least the appearance of impropriety would be created if you took that job and continued to vote on or try to influence the resolution of, issues which financially affect that office.

We hope this information is helpful.

Very truly yours,



PAUL F. MACRI
Assistant Attorney General

PFM:mfe