

MAINE STATE LEGISLATURE

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82-31

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

May 21, 1982

Honorable Phyllis Roberts
R.F.D. #3
Gorham, Maine 04038

Dear Representative Roberts:

You have requested an opinion from this office as to whether the offices of election warden and member of a municipal board of registration of voters are incompatible. Our review of the election statutes does not disclose any specific instance in which the duties of these two offices could not theoretically be carried out by one individual.^{1/} Howard v. Harrington, 114 Me. 443 (1916). Thus, technically there is no incompatibility. Nonetheless, we think that it would be inadvisable for a person to serve in both capacities.

A review of the election law statutes indicates that both of these persons have substantial duties on election day. Section 831^{2/} sets out the various duties of the registrar (and therefore the board of registration, § 43(4)) on election day. These include registering and enrolling new voters, correcting errors in the voting list and issuing certificates to voters whose names or addresses were erroneously omitted from the list or placed incorrectly on the list. Section 832 describes the duties of the warden.

^{1/} Under 21 M.R.S.A. § 831(1)(B), the certificate issued to a voter whose name or address was erroneously omitted from or placed on the voting list is directed to the election warden. This does not, in our view, constitute an insuperable conflict since the board of registration member could theoretically address the certificate to him- or herself as election warden.

^{2/} All references to sections are to Title 21, M.R.S.A.

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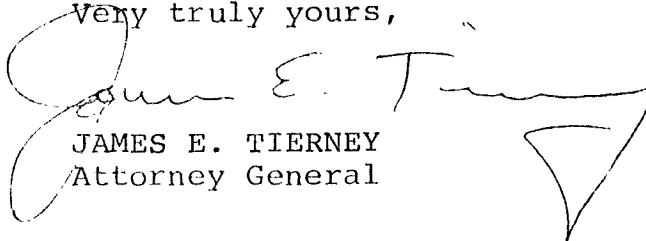
They include enforcement of the election laws at the voting place, keeping order there and supervising the election clerks.

It is clear from the description of the duties of these two offices that it would be difficult, if not impossible, for one person to act as both without some disruption of the election process. Furthermore, the alternative which you suggest, that the person appointed warden would not take part in the activities of the board of registration during the election, would reduce the board of registration to two in number, raising the possibility of a tie vote on any decision and reducing its ability to function generally. See § 43(4). For these reasons, we would suggest that this course of action not be taken.

Finally, should the town clerk in any event decide to appoint a member of the board of registration as the election warden, he or she should be aware that a warden cannot be an officer of a municipal committee of a political party. 21 M.R.S.A. § 531. Since a member of the board of registration may be a member of a political committee of the town, see 21 M.R.S.A. § 43, there is the possibility that that member of the board of registration would be an officer of such a committee and, therefore, would be prohibited from being a warden under § 531.

I hope that this information addresses your concerns. Please do not hesitate to call on us if we can be of any further service.

Very truly yours,



JAMES E. TIERNEY
Attorney General

JET:jwp

cc: James Henderson