

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

August 25, 1983

Honorable James McBrierty
Rt. #1
Caribou, Maine 04736

Dear Senator McBrierty:

You have sought an Opinion from this Office on the question of whether a person may simultaneously serve as a member of a school administrative district and the town manager of a town within that district. As you know, 5 M.R.S.A. § 195 requires the Attorney General to respond to questions from legislators, "upon questions of law. . . ." Because the answer to your question concerns matters of fact and not of law, and therefore cannot be resolved by this office in an Opinion, I must respectfully decline to provide the formal opinion which you have requested.

In order to be of some assistance to you in this matter, however, I wanted to make sure that you are aware that there are two specific procedures which would test the status of the person in his office or would have the effect of removing him. The first of these alternatives is the procedure of address by the Legislature.^{1/} Address is a legal procedure whereby persons holding public offices may be removed by the Governor after action by both branches of the Legislature. Me. Const., art, IX, § 5. That section of the Maine Constitution sets out the requirements for address, which are that the causes of the removal be stated and entered on the journal of the House in which it is originated, that a copy of the charges be served upon the person who is sought to be removed and that he be permitted to have a hearing in his defense. Id.

^{1/} Impeachment is not an appropriate remedy in this case since no misdemeanor in office has been alleged. See Me. Const., art. IX, § 5.

The question of the specificity of the causes as they must be stated in the journal has been addressed by the Maine Supreme Judicial Court in the case of Moulton v. Scully, 111 Me. 428 (1914). In that case, the Court stated as follows:

. . . [T]he causes stated must be legal causes. The causes contemplated by the constitution can be neither trivial nor capricious. They must be such as specially relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting rights and interests of the public. They must be causes attaching to the qualifications of the officers, or his performance of his duties, showing that he is not a fit or proper person to hold the office.

411 Me. at 433.

Once the three requirements of stating the causes, giving notice and allowing a hearing have been fulfilled, however, there is no further limitation on the power of the Legislature and Governor to remove the person in question from his office. Id. at 432.

The second alternative is a quo warranto action brought in Superior Court. Such an action would address the question of whether an officeholder rightfully holds his office, see generally Lund ex rel. Wilbur v. Pratt, 308 A.2d 554 (Me. 1973); Opinion of the Justices, 135 Me. 519 (1936), but would not put any other person into the office. Commonwealth v. Swazey, 133 Mass. 538 (1882).

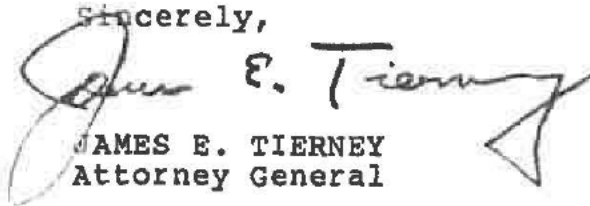
It should be noted that the cases in Maine have uniformly held that a quo warranto action, while it may be initiated by private citizens, must be prosecuted in behalf of those private citizens by the Attorney General. See, e.g., Lund ex rel. Wilbur v. Pratt, *supra*; State v. Elwell, 156 Me. 193 (1960); State v. Harmon, 115 Me. 268 (1916). While these cases represent the current rule in Maine, it is my view that the Attorney General ought not to be a necessary party in such cases, if a voter or other appropriate party seeks to test the right of a person to a public office. It seems to me that private citizens with an adequate stake in the question should properly be able to test such rights without the intervention of the Attorney General. Therefore, should a private party seek to bring a quo warranto action without the Attorney

General, and should the issue of the necessity of the Attorney General as a party be raised at the level of the Maine Supreme Judicial Court, the Attorney General's Office would be willing to appear as an amicus curiae for the position that the Attorney General is not an indispensable party to these actions.

In conclusion, nothing in this Opinion should be construed as taking a position one way or another on the merits of the question of whether the person in question may simultaneously hold the offices of member of a school administrative district and town manager. As noted above, this question presents factual issues which cannot be resolved by an Opinion of this Office.

I hope this information is useful. If you have any further questions, please do not hesitate to contact this Office.

Sincerely,

A handwritten signature in cursive script that reads "James E. Tierney". The signature is written in dark ink and is positioned above the typed name and title.

JAMES E. TIERNEY
Attorney General

JET/ec