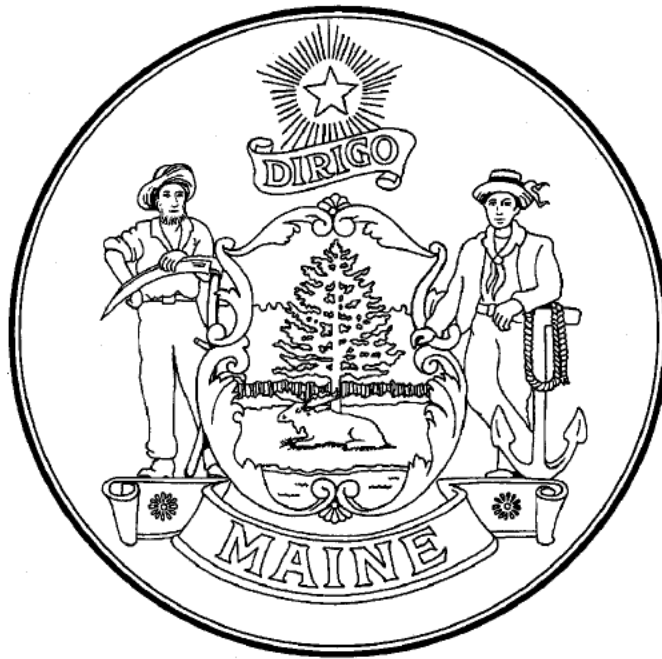


MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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

December 22, 1983

Honorable Patrick E. Paradis
18 Laurel Street
Augusta, Maine 04330

Dear Representative Paradis:

This will respond to your request for an Opinion of this Office as to whether a municipal police officer may be a candidate in a partisan political election for the office of County Sheriff while retaining his municipal employment. For the reasons discussed below, it is the Opinion of this Office that state law does not prohibit such a candidacy but that the Federal Hatch Act (5 U.S.C. § 1501) may apply to the situation you describe.^{1/}

Maine presently has two statutes which deal with the subject of the political activities of state officers and employees. See 5 M.R.S.A. §§ 14 and 679-A. See generally, Op. Atty. Gen. No. 83-16 (April 15, 1983, copy attached). Neither statute, however, applies to municipal employees, nor has research uncovered any other state law which prohibits a

^{1/} This Opinion is limited to a discussion of state and federal law and does not address any municipal ordinances or charter provisions, or collective bargaining agreements, which might apply to municipal employees or officers who wish to run for political office. Whether such ordinances or charter provisions or agreements exist as well as their scope and interpretation are matters more appropriately determined by the municipal officers in consultation with local counsel.

municipal law enforcement officer from being a candidate in a partisan political election for county sheriff.

The Hatch Act (5 U.S.C. § 1501, et seq.) is a federal statute which imposes various restrictions on the political activities of certain state and local employees. Briefly summarized, the Hatch Act, if applicable, prohibits a local employee from being a candidate in a partisan political election. See 5 U.S.C. §§ 1502(a)(3) and 1503. The term "state or local officer or employee" is defined to mean "an individual employed by a state or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency," ^{2/} 5 M.R.S.A. § 1502(4) (emphasis supplied).

In view of the foregoing, it is conceivable that the municipal law enforcement officer who is the subject of your inquiry may fall within the prohibitions of the Federal Hatch Act, provided, of course, that he fits within the definitional scope of that law and does not qualify for any exceptions

^{2/} The term "state or local agency" is defined to mean "the executive branch of a state, municipality or other political subdivision of a state, or an agency or department thereof." 5 U.S.C. § 1501(2). Moreover, 5 U.S.C. § 1501(4) specifically provides that the following are not state or local officers or employees:

(A) an individual who exercises no functions in connection with that activity; or

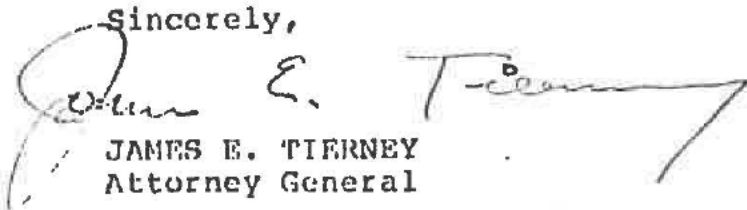
(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

Finally, the Hatch Act's prohibition against being a candidate in a partisan political election does not apply to certain state and municipal officials, including the Governor, the mayor of a city or "a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil-service system." 5 U.S.C. § 1502(C).

thereto.^{3/} However, if the municipal law enforcement officer is paid solely from state or municipal funds, it is the Opinion of this Department that no state or federal law or regulation prohibits that person from seeking partisan elective office.

I hope this information is helpful to you, and please feel free to call upon me if I can be of further assistance.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec
Enc.

^{3/} It is our understanding that advisory opinions on the meaning and applicability of the Hatch Act are rendered by the Office of Special Counsel, 1717 H Street, N.W., Washington, D.C. 20419. A copy of the Federal Hatch Act is enclosed for your information.