

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

April 4, 1984

Arthur A. Stilphen, Commissioner
Department of Public Safety
State House Station #42
Augusta, Maine 04333

Dear Commissioner Stilphen:

This will respond to the Inter-Departmental Memorandum of Colonel Allan H. Weeks, Chief of the Maine State Police, of March 8, 1984, seeking this Department's interpretation of that portion of 25 M.R.S.A. § 1503 which provides that members of the State Police "shall hold no other office during their term of service."^{1/} In particular, Colonel Weeks has asked

^{1/} 25 M.R.S.A. § 1503 provides, in its entirety, as follows:

Members of the State Police shall be provided at the expense of the State with a distinctive uniform and badge, and with suitable equipment, all of which shall remain the property of the State. When on duty to enforce the laws of the road, and at such other times as the chief may require, state policemen shall be in uniform. They shall hold no other office during their term of service. It shall be unlawful for any person to wear the prescribed uniform or badge of the State Police or any distinctive part thereof, except on order of the Chief of said State Police. (emphasis supplied).

whether that law prohibits a member of the State Police from holding office as a town selectman or a member of a local school board. Colonel Weeks has also asked whether 25 M.R.S.A. § 1503 has been repealed by implication by 5 M.R.S.A. § 679-A(3), which allows members of the classified state service generally to hold non-partisan offices.^{2/} For the reasons discussed below, it is this Department's Opinion that the positions of town selectman and school board member are "offices" within the meaning of 25 M.R.S.A. § 1503 and, therefore, may not be held by members of the State Police during their term of service. Additionally, it is this Department's conclusion that the legal effect of 25 M.R.S.A. § 1503 has not been altered by the subsequent enactment of 5 M.R.S.A. § 679-A(3).

25 M.R.S.A. § 1503 was enacted in 1925. See P.L. 1925, c. 144. There is no indication in the legislative history of the section as to what "offices" the Legislature had in mind which members of the State Police may not hold. The term "office" has, however, been construed by the courts in other statutory contexts and it is generally agreed that a critical distinction exists between an "office holder" and an employee, in which the former possesses and may exercise governmental authority simply by virtue of the office he holds. In other words, the term "office" "implies an authority to exercise some portion of the sovereign power, either in making, executing or administering the laws." Opinion of the Justices, 3 Me. 481, 482-83 (1822). An employee, on the other hand, possesses no such authority, and acts under the direction and control of another. See, e.g., Sears, Roebuck & Co. v. Inhabitants of Presque Isle, 150 Me. 181, 185, 107 A.2d 475 (1954); Burkett ex rel. Leach v. Ulmer, 137 Me. 120, 123, 15 A.2d 858 (1940); Pennell v. City of Portland, 124 Me. 14, 16, 125 A. 143 (1924); Stephens v. City of Old Town, 102 Me. 21, 25 (1906); Goud v. City of Portland, 96 Me. 125, 126 (1902). See generally Op. Me. Att'y. Gen. (December 20, 1978).

^{2/} 5 M.R.S.A. § 679-A(3) provides:

No officer or employee in the classified service of this State shall be a candidate for elective office in a partisan public election. This subsection shall not be construed as to prohibit any such officer or employee of the State from being a candidate in any election if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected.

It is obvious that a town selectman or a member of a school board or committee is a public officer, not a mere employee. 30 M.R.S.A. § 1901(7) defines the term "municipal officer" for purposes of the title of the Maine statutes dealing with municipalities to include the "selectmen or councillors of a town," and 30 M.R.S.A. § 2316 directs the board of selectmen to "exercise all administrative and executive powers of the town. . . . " Similarly, 20-A M.R.S.A. § 1(28) and (29) specifically define the term "school board" and "school committee" to mean "the governing body with statutory powers and duties for" a school administrative unit or municipal school unit respectively. Thus, individuals who serve on a board of selectmen or a school board or committee are in no sense employees. Accordingly, this Department concludes that 25 M.R.S.A. § 1503 forbids a member of the State Police from holding office as a selectman or as a member of a school board or school committee during his term of service.

It is also the conclusion of this Department that the prohibition of 25 M.R.S.A. § 1503 against the holding of any other "office" by members of the State Police has not been affected by the subsequent enactment of 5 M.R.S.A. § 679-A(3). See note 2, supra. The first sentence of that statute prohibits members of the classified service from being a candidate "in a partisan public election." It then goes on to provide:

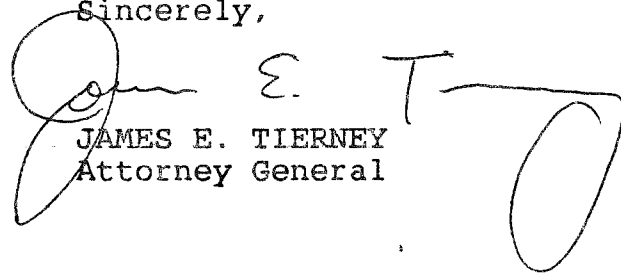
This subsection shall not be construed as to prohibit any such officer or employee of the State from being a candidate in any election if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected. (emphasis added).

By its very terms, this provision was intended to address the question of candidacy for public office only. It does not deal in any way with a candidate's eventual eligibility to hold public office. Thus, it is clear that this provision would not be found to have impliedly repeal a specific law prohibiting the holding of office, such as 25 M.R.S.A. § 1503, particularly when it is remembered that courts are reluctant to find implied repeals, preferring to read all statutes harmoniously when at

all possible. See, e.g., State ex rel. Tierney v. Ford Motor Co., 436 A.2d 866 (Me. 1981); Small v. Gartley, 363 A.2d 724 (Me. 1976).

I hope this information is helpful to you, and please continue to call upon this Office if we can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. E. Tierney", is written over the typed name. The signature is fluid and cursive, with a large loop at the end of the last name.

JAMES E. TIERNEY
Attorney General

JET/ec