

MAINE STATE LEGISLATURE

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

October 31, 1985

Honorable Gary C. Cooper
Rural Route #2
Box 241
South Windham, Maine 04082

Dear Representative Cooper:

This will respond to your oral request for an opinion of this Department as to whether, in view of the enactment of Chapter 413 of the Public Laws of 1985, a State Legislator may also hold the office of Cumberland County Commissioner or Treasurer. For the reasons discussed below, it is the opinion of this Department that, notwithstanding Chapter 413, Article IV, Part 3, Section 11 of the Maine Constitution forbids a State Legislator from simultaneously holding the office of Cumberland County Commissioner or Treasurer.

Article IV, Part 3, Section 11 provides in its entirety as follows:

No member of Congress, nor person holding any office under the United States (post officers excepted) nor office of profit under this State, justices of the peace, notaries public, coroners, officers of the militia excepted, shall have a seat in either House during his being such member of Congress, or his continuing in such office.

The issue presented by your question is whether the office of County Commissioner or County Treasurer is an "office of profit under this State" within the meaning of this provision. In a prior Opinion of this office dated December 29, 1977, it was concluded that the office of Aroostook County Treasurer is an "office of profit." That Opinion concluded that an office

"under this State" is one that is created by the Legislature and has powers and duties which have been legislatively defined and are to be performed independently for the benefit of the public. It was also concluded that an office is one "of profit" if there is any compensation received over and above expenses.

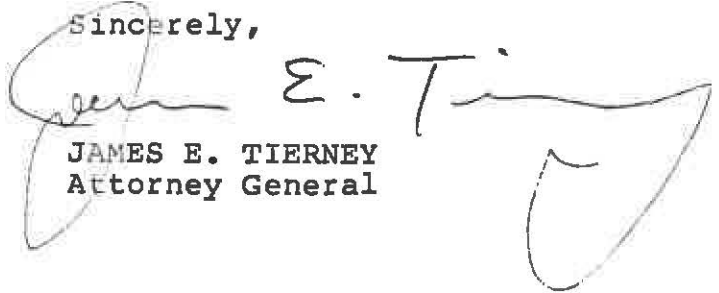
This analysis clearly applies to the offices of Cumberland County Commissioner and Treasurer, which are similarly created by statute, 30 M.R.S.A. §§ 101 and 602, and whose occupants receive compensation above expenses. In accordance with our prior Opinion, therefore, a State Legislator is constitutionally prohibited from simultaneously holding a seat in either House of the Legislature and the office of county commissioner or treasurer.

You have specifically asked whether this conclusion should be reconsidered in view of the enactment by the 112th Legislature of Chapter 413 of the Public Laws of 1985 (effective September 19, 1985). That legislation enacted 30 M.R.S.A. §§ 1651, et seq. to authorize the Cumberland County Commissioners to appropriate money, according to a budget and with the assistance of an advisory committee, without the necessity of obtaining legislative approval. From the foregoing, however, it should be clear that this legislative action cannot affect the conclusion reached above for the simple reason that acts of the Legislature cannot alter provisions of the Constitution. Thus, even though the Legislature may have delegated to the Cumberland County Commissioners the power to fix compensation for themselves and for the County Treasurer, those offices remain "offices of profit under this State" within the meaning of Article IV, part 3, Section 11. Consequently, their occupants are prohibited from simultaneously holding a seat in either House of the Legislature.^{1/}

^{1/} In a subsequent Opinion dated January 6, 1978, this Office concluded that Article IV, Part 3, Section 10 of the Maine Constitution would not prohibit a State Legislator from being appointed to fill a vacancy in the office of Aroostook County Treasurer since the office of county treasurer is an elective office, provided, of course, that the Senator or Representative resigned his seat in the Legislature prior to taking office as Treasurer. The reasoning of this Department's January 6, 1978 Opinion would also apply to the office of county commissioner. For your convenience, copies of the Opinions dated December 29, 1977 and January 6, 1978 are enclosed with this Opinion.

I hope this information is helpful to you, and please do not hesitate to contact this office if we can be of further assistance to you.

Sincerely,

A handwritten signature in cursive script, appearing to read "James E. Tierney". The signature is written in dark ink and is positioned to the right of the typed name.

JAMES E. TIERNEY
Attorney General

JET/ec