

# MAINE STATE LEGISLATURE

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

August 3, 1987

Honorable Rodney S. Quinn  
Secretary of State  
State House Station #29  
Augusta, Maine 04333

Dear Secretary Quinn:

You have asked whether the appointment of Mr. Peter W. Danton to the position of Deputy Secretary of State would prevent him from continuing to serve as a member of the Maine Turnpike Authority because of any incompatibility between the two offices. For the reasons which follow, it is the Opinion of this Department that the two offices are not incompatible, and that Mr. Danton may hold them simultaneously.

Mr. Danton is currently one of the five members of the Maine Turnpike Authority, a state agency which is responsible for the operation of the Maine Turnpike. 23 M.R.S.A. § 1961, et seq. The office to which you propose to appoint him, that of Deputy Secretary of State, is responsible for the Division of Public Administration, which has responsibility, among other things, for the conduct of state elections and the registration of corporations to do business in the State. Your question is whether Mr. Danton is prohibited by law from holding both offices simultaneously.

It is, first of all, important to note that since the two offices in question both belong to the Executive Branch of government, there is no constitutional question raised. Op.Me.Att'y Gen. (Apr. 24, 1973) (position of right-of-way

agent at the Department of Transportation not incompatible with membership on the Soil and Water Conservation Commission). Nor does there appear to be any statutory bar to both positions being held simultaneously, the statutes relating to each position being silent as to whether incumbents in either position are prohibited from holding other state office. See, e.g., Op.Me.Att'y Gen. (Nov. 30, 1973) (Director of Bureau of Civil Defense prohibited by statute, 37-A M.R.S.A. § 1(2), from serving on the Maine Human Rights Commission). Indeed, a general provision of state law, 5 M.R.S.A. § 12003-A(4), expressly contemplates that full-time state employees, such as a Deputy Secretary of State, may from time to time serve on part-time boards or commissions of the state by providing for the method of their compensation in such circumstances.

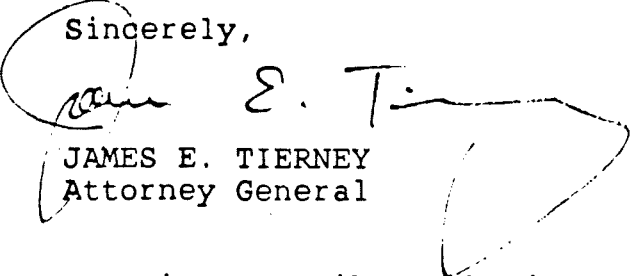
Since there is no constitutional or statutory impediment to the holding of both offices by Mr. Danton, the only question remains whether the offices might be found as a matter of common law to be incompatible. The general rule on this point is: "Two offices are incompatible when the holder cannot in every instance discharge the duties of each. The acceptance of the second office, therefore, vacates the first." King v. Tizzard, 9 B. & C. 418, quoted in Howard v. Harrington, 114 Me. 443, 446 (1916). The question thus becomes whether the discharge of the functions of Deputy Secretary of State would in any way be inconsistent with the discharge of the functions of a member of the Maine Turnpike Authority.

In this regard, the only Opinion of this Department thus far to have found two positions in the Executive Branch to be incompatible was that of August 2, 1973, in which the Department advised that the Commissioner of Conservation could not serve on the Board of Environmental Protection for the reason that the Department of Conservation had historically been required to obtain various permits from the Board, thus rendering service in the two positions incompatible. Op.Me.Att'y Gen. (Aug. 2, 1973). On the other hand, the Office has ruled that the position of Adjutant General was not inconsistent with the position of Chief of the State Highway Police, Op.Me.Att'y Gen. (Nov. 30, 1927), reprinted in 1924-28 Me.Att'y Gen. Ann. Rep. 275-76, and that the position of Commissioner of Finance was not incompatible with that of the position of State Controller, Op.Me.Att'y Gen. (May 6, 1942), reprinted in 1941-42 Me.Att'y Gen. Ann. Rep. 109. In the view of this Department, the question which you pose clearly falls in the latter category of cases. The Maine Turnpike Authority exercises no regulatory authority over the activities of the Department of State, nor does the Department of State exercise

any authority over the Maine Turnpike Authority.\*/ Thus, there is no incompatibility between the two offices in question, and they may be held simultaneously.

I hope the foregoing responds to your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,

  
JAMES E. TIERNEY  
Attorney General

JET/ec

cc: Robert Pachios, Acting Chairman, Maine Turnpike Authority  
Dana Connors, Commissioner of Transportation  
Peter W. Danton

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\*/ The Secretary of State is required, pursuant to Section 8056(1)(B) of the Maine Administrative Procedure Act, 5 M.R.S.A. § 8001, et seq., to receive for filing "in a form prescribed by [him]" all rules adopted by state agencies, including the Maine Turnpike Authority. In the view of this Department, the exercise of this ministerial authority by the Secretary over the Authority is of insufficient significance to cause a legal incompatibility to arise between the offices of Deputy Secretary of State and member of the Maine Turnpike Authority. If, however, you were concerned about this particular problem, it could be remedied simply by not assigning to Mr. Danton the responsibility for supervising the filing of rules with your office.