

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



88-7

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

September 28, 1988

Parker A. Denaco
Executive Director
Maine Labor Relations Board
State House Station #90
Augusta, Maine 04333

Dear Mr. Denaco:

I am writing to confirm the advice recently given by my staff to yours concerning the constitutionality of a member of the Maine Labor Relations Board serving as a Probate Judge. This question arose because Ms. Jessie Briggs Gunther, a former Superior Court Justice, has recently become a member of the Labor Relations Board and is currently a candidate for election this coming November for the position of Piscataquis County Probate Judge. For the reasons which follow, it is the opinion of this Department that the two positions may not be held simultaneously by the same person.

This question is controlled by Article VI, Section 5 of the Maine Constitution, which provides:

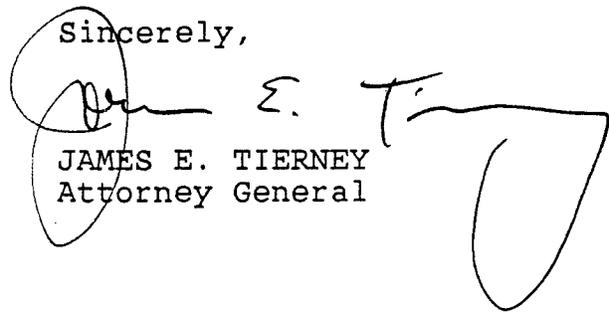
No Justice of the Supreme Judicial Court or any other court shall hold office under the United States or any other state, nor under this State, except as justice of the peace or as member of the Judicial Council.

Since the position of a member of the Maine Labor Relations Board clearly constitutes an "office . . . under this State" within the meaning of this provision, the question is whether a Probate Court constitutes "any other court" for purposes of the section.

There does not appear to be any decision of the Supreme Judicial Court determining whether this provision applies to the probate courts of the State. Nonetheless, it is quite clear that such courts are encompassed within its meaning. For example, the very next section of the Maine Constitution, Article VI, Section 6, prescribes the manner by which judges of probate are to be chosen, and provides further that the Legislature may "establish a different Probate Court system" if it so chooses. Maine Const., Amendment CVI (1967). Indeed, the Supreme Judicial Court has given an advisory opinion that the transfer by the Legislature of the functions of the Probate Court to the Superior Court, an institution which is unquestionably a "court" within the meaning of Article VI, Section 5, would not be unconstitutional. Opinion of the Justices, 412 A.2d 958 (Me. 1980). Moreover, the statutes which the Legislature has enacted relating to the Probate Court, 4 M.R.S.A. § 201, et seq., consistently refer to that institution as a "court". It is, therefore, difficult to escape the conclusion that both the drafters of the relevant constitutional provisions, and the Legislature, exercising its delegated power to establish probate institutions pursuant to such provisions, regard those institutions as "courts". Thus, the prohibitions contained in Article VI, Section 5 prevent a sitting Probate Judge from holding the position of member of the Maine Labor Relations Board, or any other state office.

Please feel free to let me know if you have any further questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney", is written over a circular stamp. The signature is fluid and cursive.

JAMES E. TIERNEY
Attorney General

JET/ec

cc: Hon. Jessie Briggs Gunther