STATE OF MAINE

Inter-Departmental Memorandum Date January 30, 1986

To James S. Henderson, Deputy Dept. Secretary of State

From William R. Stokes, Assistant Dept. Attorney General

Subject Legislator-Lobbyist: Conflict of Interest

This will respond to your memorandum dated January 6, 1986 to Robert Frank, Assistant Attorney General, posing the following question:

> May a member of the Legislature also serve as Executive Director of the Maine County Commissioners Association when a significant portion of the Director's duties include acting as a lobbyist?

As you correctly point out in your memorandum, there is no explicit prohibition in the law which prohibits a Legislator from acting as a lobbyist. Nevertheless, it is my opinion that the practice of a Legislator acting as a paid lobbyist before the Legislature of which he is a member would constitute a conflict of interest under the Legislative Conflict of Interest statutes, general common law principles pertaining to conflicts of interest, as well as the legislative code of ethics adopted by the Maine Legislature.

There are several provisions of the laws governing legislative ethics which I believe are relevant to your inquiry. 1 M.R.S.A. § 1014(1)(C), (D) and (E) all, in my view, relate to this issue. They provide that a conflict of interest includes the following:

> C. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator.
>
> D. Appearing for, representing or assisting another in respect to a claim before the Legislature, unless without compensation and for the benefit of a citizen.
>
> E. Where a Legislator . . . accepts or engages in employment which could impair the Legislator's judgment, or where the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded him . . . with intent to influence his conduct in the performance of his official duties, or where the Legislator . . . stands to derive a personal private gain or loss from employment because of legislative action, distinct from the gain or losses of

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> of other employees or the general community.

In addition, 1 M.R.S.A. § 1014(2)(A) provides that it is presumed that a conflict of interest exists where there are circumstances which involve a substantial risk of undue influence by a Legislator, including but not limited to the following cases:

> A. Appearing for, representing or assisting another in a matter before a state agency or authority, unless without compensation and for the benefit of a constituent . . . .

The legislative code of ethics provides in relevant part as follows:

> No State Legislator will accept any employment which can possibly impair his independence and integrity of judgment. . . .

Additionally, there are common law principles of conflict of interest which have application where an individual holds a public office and is also involved in employment such that there is a question as to whether he can be totally faithful to his public duties. A public officer is required to exercise his powers and fulfill his legal obligations with "perfect fidelity . . . and whatever has a tendency to prevent [the] exercise of such fidelity is contrary to the policy of the law, and should not be recognized as lawful. . . . " Lesieur v. Inhabitants of Rumford, 113 Me. 317, 321, 93 A. 838, 839 (1915) quoted in Opinion of the Justices, 330 A.2d 916. As a public officer, an individual acts as a trustee on behalf of the public and as such he must not be placed "in a situation of temptation to serve his own personal interests to the prejudice of the interests of those for whom the law authorized and required him to act on the premises as an official." Tuscan v. Smith, 130 Me. 36, 46, 153 A. 389 (1931). With respect to the common law principles of conflict of interest, it is generally easy to articulate the rule, but more difficult to apply the rule to any given fact situation, and therefore, it is necessary to examine the nature of the public office involved as well as the private employment in question. As the Supreme Judicial Court stated, "Essentially, each case will be 'law' only unto itself." Opinion of the Justices, 330 A.2d at 917 (Me. 1975).

As can be seen from the foregoing, there would appear to be serious potential for a conflict in a situation where a member of the Legislature acts as a paid lobbyist for the

purpose of influencing his colleagues in the Legislature for some other interest. While the legislative conflict of interest statute may not explicitly say that a Legislator may not be a lobbyist, the entire spirit of that statute is designed to prevent Legislators from accepting compensation or remuneration for the purposes of assisting or representing someone before the Legislature.

For your information I have enclosed a copy of an opinion issued by this office dated April 11, 1979 (Op. 79-69) in which the subject of conflict of interest as it relates to acting as a lobbyist is addressed.

In view of the foregoing, it is my view that there is a conflict of interest when a Legislator engages in private employment a significant portion of which consists of acting as a lobbyist before the very Legislature of which he is a member.

I hope this information is helpful to you, and please don't hesitate to contact me at 3661 if you have any questions or if I can be of any assistance to you.

WILLIAM R. STOKES
Assistant Attorney General

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