LEGISLATIVE RECORD

OF THE

1st Special Session

OF THE

One Hundred and Sixth Legislature

OF THE

STATE OF MAINE

Volume II

MARCH 7, 1974 TO MARCH 29, 1974

Index

Legislative Ethics Committee Report

Kennebec Journal
Augusta, Maine

APPENDIX

LEGISLATIVE RECORD

of the

One Hundred and Sixth Legislature

Report of the
Committee on Legislative Ethics

REPORT OF THE LEGISLATIVE ETHICS COMMITTEE

The Committee on Legislative Ethics was directed by the 105th Legislature of the State of Maine by House Order dated February 29, 1972, a copy whereof is attached hereto, to study the provisions of the bill: An Act Relating to Disclosure of Economic Interests by Legislators, House Paper 1572, Legislative Document 2029. The purpose of the study was to develop, if possible, more meaningful legislation for presentation to the regular session of the 106th Legislature.

The Committee has carefully considered and studied the provisions of Legislative Document 2029. The primary thrust of the legislation was to provide for disclosure of economic interests of legislators although some consideration was given to disclosure of interests of some members of the Judicial and Executive Departments. Basically, the legislation, somewhat vague in details of operation, required each candidate for the Legislature to file a statement of economic interests. The legislation did not require a disclosure of the legislator's spouse's interests and did not provide for any updating of the information from time to time.

It should also be noted that the 105th Legislature enacted Chapter 602 of the Public Laws of 1971, which is entitled An Act Relating to Legislative Ethics. This is a comprehensive provision which considerably broadens the authority of the Legislative Ethics Committee, defines conflict of interests of legislators and also specifically provides that a legislator has a conflict of interest in the situation where the adoption of proposed legislation will result in a direct significant financial gain to him or his spouse or his employer or to a person, corporation or association in which he or his spouse owns stock or other securities. The legislation prohibits a legislator from voting in such a situation and also provides that a legislator has a conflict where his vote is influenced by a promise of payment of money or promise of employment to him or a member of his family. In short, the legislation is most comprehensive and all encompassing as respects conflicts of interests of legislators.

The real purpose of L. D. 2029 was to reach and eliminate those situations where there might be possible conflicts of interests by legislators. The Committee feels, however, that the recently enacted provisions which broaden the authority of the Legislative Ethics Committee accomplish the purposes of L. D. 2029. Not only is conflict of interest defined in the ethics legislation but the Ethics Committee has the power to subpoena witnesses, conduct investigations, secure books and records and may seek judicial help in the enforcement of its orders. In short, it has very broad powers to inquire into and examine possible conflicts of interests by legislators.

It therefore appears to the Committee that there are ample statutory provisions on the books at this time with respect to conflicts of interests of legislators and that, although the Committee approves of the concept of meaningful disclosure provisions, the purpose of L. D. 2029 is, in fact, accomplished by existing statutes.

Therefore, the Committee recommends at this time that further legislation in this area is not necessary and respectfully recommends to the members of the 106th Legislature that they carefully observe the workings of the Act Relating to Legislative Ethics in order that its practical effect may be observed before any further steps are taken in this area.

January 4, 1973

OPINION AND RULING OF THE COMMITTEE ON LEGISLATIVE ETHICS

January 16, 1973

FACTS:

There is presently before the 106th Legislature a bill entitled "AN ACT Relating to Inherent Managerial Functions Under the Municipal Employees Labor Relations Law" (H. P. 1531, L. D. 1974). The bill is pending action on veto by the Governor.

The legislation defines several broad areas of educational policymaking as "inherent managerial functions" and states that they shall not be subject to collective bargaining. If enacted, the legislation will alter the Municipal

Employees Labor Relations Law and will have an impact on future collective bargaining between school boards and teachers.

The legislation is opposed by the Maine Teachers Association and supported by the Maine School Management Association.

Members of the House of Representatives involved in various aspects of the educational field have asked the Committee on Legislative Ethics for a ruling as to whether conflicts of interest may exist as a result of their employment or activities. One member of the Legislature is self-employed as a negotiator of teacher contracts on behalf of management. Another member of the Legislature is a paid employee of the Maine Teachers Association and a third member is an officer of that organization, an active teacher and a member of the Negotiating Committee of her local teachers association.

QUESTIONS PRESENTED:

1. Is there a conflict of interest if a legislator who engages in an occupation as a negotiator of teacher contracts on behalf of management votes on the legislation?

2. Is there a conflict of interest if a legislator who is an active teacher, an officer of the Maine State Teachers Association and a member of the Negotiating Committee of her local teachers association votes on the legislation?

3. Is there a conflict of interest if a legislator who is an employee of the Maine Teachers Association votes on the legislation?

4. Is there a conflict of interest if a legislator who is a teacher votes on the legislation?

ANSWERS:

1. No.
2. No.
3. No.
4. No.

REASONS:

The Committee on Legislative Ethics, in determining the resolution of the above questions, is governed by the laws relating to legislative ethics (3 M.R.S.A. § 381-385). The statutory guidelines in the legislative ethics law were only recently effective (June 9, 1972). This ruling is the first issued by the Committee under those provisions.

Title 3 M.R.S.A. § 382 provides:

"For the purposes of this chapter a Legislator shall be deemed to have a conflict of interest:

"1. Legislator or spouse. When the adoption of proposed legislation will result in a direct significant financial gain to him or his spouse;

"2. Employer, corporation or association. When the adoption of proposed legislation will result in a direct substantial financial gain to his employer or to a person, corporation or association in which he or his spouse own stock or other securities; and

"3. Legislator's vote. When the Legislator's vote on a proposed matter is influenced by the promise of payment of money or by the promise of employment to him or a member of his family."

The above provisions in general indicate that a legislator does not have a conflict of interest unless the adoption of proposed legislation will result in a direct significant financial gain to him, his spouse or his employer, or to a person, corporation or association in which he or his spouse own stock or other securities.

Concerning the legislators who engage in the negotiation of teacher contracts, the Committee has conferred with the legislators involved and is convinced that the passage or defeat of the legislation will not result in any direct significant financial gain. Too, there apparently will be no real change in the matters to be negotiated by them since the legislation is viewed as controlling the ultimate disposition of negotiated matters.

The Committee has also closely examined the facts surrounding the employment of the legislator member who is an employee of the Maine Teachers Association and is equally convinced that the passage or defeat of the legislation would result in no direct significant financial gain to the legislator or to his employer.

With respect to the teacher members of the Legislature, the Committee is aware of no facts which would indicate

that there is a direct significant financial gain, if the legislation is adopted or defeated, to any teacher legislator. Teacher legislators would have any benefit or detriment accrue to them to no greater or lesser extent than any other teacher.

Therefore, the Committee finds under the provisions of 3 M.R.S.A. § 382, that no conflict of interest exists with respect to the above-described factual situations.

Richard D. Hewes, Speaker of
the House, Chairman

Kenneth P. MacLeod,
President of the Senate

Senator Richard N. Berry,
Senate Majority Leader

Rep. Larry E. Simpson,
House Majority Leader

Senator Joseph E. Brennan,
Senate Minority Leader

Rep. John L. Martin,
House Minority Leader

State of Maine
One Hundred and Fifth Legislature
Committee on Legislative Ethics
January 30, 1973

Representative Stewart Smith
State House
Augusta, Maine 04330

Dear Representative Smith:

You have informally asked the Committee on Legislative Ethics for its opinion concerning whether or not you would have a conflict of interests if you were to introduce and support certain legislation.

The committee understands that you propose to introduce into the Legislature the following matters:

1. AN ACT to Establish a State Mortgage Assistance Program; and

2. AN ACT to Establish a Revenue Bonded State Flexible Interest Rate Mortgage Program.

The Act to Establish a State Mortgage Assistance Program would enable the Maine Housing Authority to provide interest reduction payments which were previously made by the Farmers Home Administration or the Department of Housing and Urban Development.

The flexible interest rate mortgage program would provide a cost-free revenue bond method to take the place of monies paid under federal interest reduction programs on mortgages. Both of the above Acts have reference to the financing of housing.

It is our understanding that a corporation in which you hold one-third of the stock interest is engaged in your geographical area in the construction of housing. This housing may presently be subsidized under federal programs which the above legislation seeks to replace and it would appear that in the future the corporation would construct similar housing and thus receive whatever benefits were available under the above Acts should they be enacted into legislation. In other words, potential customers of the corporation might use one or the other of the above programs to assist in the financing of their housing to be constructed by the corporation.

You have asked whether there would be a conflict of interests for you to introduce the above legislation into the Legislature, to work actively to support the legislation or to vote on the legislation.

It is the committee's informal opinion that under existing statutory provisions relating to conflict of interests (3 M.R.S.A. §§ 381-385) you do not have a conflict of interests in any of the prescribed situations. The statutory provisions in general indicate that a legislator does not have a conflict of interests unless the adoption of proposed legislation will result in a direct significant financial gain to him, his spouse or his employer or to a person, corporation or association in which he or his spouse own stock or other securities. We did not find any "direct, significant financial gain" would arise in any of the above situations and we would note also that the corporation would not have any benefit or detriment under the legislation accrue to it to a greater or lesser extent than any other corporation.

Therefore, the committee finds that no conflict of interest exists with respect to the above-described factual situations.

Thank you for your attention.

Yours truly,

RICHARD D. HEWES
Speaker of the House
Chairman

The Senate of Maine
Augusta, Maine 04330

September 20, 1973

Hon. Richard D. Hewes
Speaker of the House
State House
Augusta, Maine

Dear Dick:

Certain statements by Representative Stanley Sproul of Augusta concerning Senator Joseph Sewall of Old Town have been reported in the news media recently setting forth facts that appear to be in the area of legislative ethics guidelines and concern, as covered by Title 3, Chapter 19. It appears desirable that this matter be clarified.

Accordingly, I request that you, as Chairman, call a meeting of the Legislative Ethics Committee at a convenient time for the purpose of considering such action, if any, as may be deemed necessary and desirable in connection with the above matter.

Sincerely,

Richard N. Berry

September 24, 1973
Honorable Richard D. Hewes
Speaker of the House
State House
Augusta, Maine 04330

Dear Dick:

I am in receipt of a copy of a letter written to you by Senator Richard N. Berry dated September 20, 1973 referring to certain statements made by Representative Sproul concerning me which have been reported in the news media recently setting forth facts that appear to be in the area of the legislative ethics as covered by Title 3, Chapter 19.

The letter has requested a meeting of the Ethics Committee, which I understand you have scheduled for October 17, 1973. I welcome the opportunity to respond and request that a public hearing be conducted by the Committee in regard to the allegations referred to by Senator Berry. Before a public hearing is held on this matter, I respectfully request that the person or persons making the allegations be required to file a statement specifying the allegations and that the statement be made under oath, as I understand the law requires.

In order to facilitate any inquiry the committee might wish to make after such a statement is filed, I would appreciate knowing what information and what documents the Committee wishes me to produce at the hearing.

Thank you for your cooperation.

Sincerely,

Joseph Sewall
State of Maine
Department of the Attorney General
Augusta, Maine 04330
October 17, 1973

The Honorable Richard D. Hewes
Speaker of the House
House of Representatives
106th Maine Legislature
Augusta, Maine 04330

Re: Legislative Ethics Committee

Dear Representative Hewes:

To assist the Committee I have assembled some background information on the language and development of the Legislative Ethics Act. These suggest that the request leading to this meeting may raise the following two issues:

1. Does the Committee presently have any question before it on which it is authorized by statute to act?

2. Assuming Committee action on the allegations attributed to Representative Sproul is otherwise appropriate, do those allegations, as reported in news media, make out a "conflict of interest" as that phrase is used in Section 382 of Title 3, M.R.S.A.?

My own conclusion is that the language and legislative history of "An Act in Relation to Legislative Ethics," demonstrate that the Committee was not authorized to act except on the basis of a legislator's written request for an advisory opinion involving himself, or a sworn complaint specifying the facts of an alleged conflict. Based on what I have seen of the relevant correspondence, the Committee so far has received neither. A brief review of the Act and incidents of its enactment will illustrate the reasons for these conclusions. Doubtless, the ground covered will be familiar to the Committee.

The Language of the Statute

On its face the Legislative Ethics Act (3 M.R.S.A. § 381-385) contains only specific and limited grants of power. As your letter of 3 October points out, the Committee is authorized to investigate conflicts of interest, but it "shall conduct such investigations... only after a person has filed a complaint under oath...specifying the facts of the alleged conflict." Criminal penalties are provided for filing a "false or groundless" complaint. Similarly, the Committee's authority to issue advisory opinions is conditioned on a "request of any legislator," and that request "shall be filed with the Committee in writing, signed by the legislator." A legislator's request for advice must call for an opinion "involving himself on questions involving conflicts of interest in legislation under consideration." It seems clear then that the Committee was directed to confine itself to real, rather than hypothetical cases, and to cases of sufficient moment to warrant either a written request for advice from a legislator or a sworn complaint, the author of which was willing to risk a jail sentence. Senator Berry's letter does not request advice "involving himself" and obviously does not concern pending legislation. Neither does Senator Sewall's letter of 24 September.

Unless the Statement of Purpose to Chapter 19 (§371) compels an extremely liberal interpretation, not suggested by subsequent sections of the Act, the Committee has nothing before it on which it is authorized to take official action. The Statement of Purpose, however, makes it clear that the legislature had no intention of enacting a sweeping ban on remote or hypothetical conflicts of interest. It recognizes that Maine should not be deprived of the services of men whose private businesses or professions may involve dealing with the State. Rather, the legislature attempted to establish an orderly procedure for dealing with the issues raised by such situations.

Legislative History

The legislative history of the Ethics Act demonstrates that limitations on the Committee's authority were intentional. Twice, in the enactment and prompt amendment of the Ethics Law, proposals to give the Ethics Committee broad authority, or define unethical conduct more comprehensively, were introduced, only to be trimmed by the Committee on State Government. The versions reported out of Committee were enacted on both occasions.

As originally introduced at the outset of the 105th Legislature, "An Act Relating to Legislative Ethics" (L. D. 39) contained three sections banning various economic inducements to legislators, together with a flexible definition of conflict of interest that invited the legislature to venture inside the gray area of legislative ethics. The invitation was decisively rejected. The Committee on State Government struck the middle subchapter, banning various economic inducements, and the section defining conflicts of interest. The Ethics Committee was left with authority to receive and investigate any "reports of conflicts of interest," and it could issue advisory opinions on request of a legislator "on problems pertaining to possible conflicts of interest," not necessarily involving the requesting member himself. (1971, L. D. 1368) In this form the proposal passed both houses without debate.

In the 1972 Special Session, however, the Ethics Committee's limited investigative discretion was cut back still further when the new law was amended. As when the Ethics Law was originally proposed, the amendments introduced were substantially broader than the amendments enacted. As introduced, they would have given the

Ethics Committee express authority to issue both advisory opinions and guidelines on its own motion, and on hypothetical as well as real conflicts, not limited to pending legislation. The Committee also would have had authority to investigate a conflict even if no formal complaint had been made. The proposed amendments seemed to contemplate that the Committee itself would develop a definition of "conflict of interest" to replace that deleted when the Act was first passed. (1971 L.D. 1980)

When the Amendments were reported out of the Committee on State Government, in exactly the present form of the Law, all the Ethics Committee's authority to proceed on its own initiative had been taken away, even the authority given it when the law was originally passed. The requirement for a sworn complaint had been added, along with a section of defining conflict of interest as a "direct significant financial gain" from the adoption of proposed legislation. Representative Marstaller explained that the restrictions and the tight definition were intentional.

A minority report in the House advocated repealing the Ethics Law altogether. It was defeated in a fairly close vote. Clearly, the one thing the Legislature intended not to do was give the Ethics Committee a roving commission to investigate and offer advice. Its jurisdiction was carefully and deliberately restricted to actual and serious controversies, involving votes on pending legislation. It is equally clear that the Committee has not been asked to develop its own definition of a conflict of interest. The Legislature's definition was intended to be exclusive.

Although Maine presently uses a restricted definition of conflict of interest, it is of passing interest that not even the states that have attempted to deal with the problem of legislators who do business with the State in private life go further than to require disclosures of interest or abstention from voting on the pertinent legislation. Some do not even go that far when the state business in question is let by competitive bidding or when the legislator himself plays no part in obtaining the contract. (e.g. Mich. Consolidated Laws §15,301 - 15,310)

The Charges Against Senator Sewall

Viewed against this background; it is doubtful that Representative Sproul's charge, even if made under oath, would raise an issue within the jurisdiction of the Ethics Committee as the Maine statute is currently written. He has said only that the Chairman of the Appropriations Committee is President of a firm that has performed compensated professional services for various state agencies and that his suspicions have been aroused. He does not say the Chairman has ever voted on an appropriation used to pay for those services, or that his vote on any appropriation was ever influenced by an offer or expectation of state business for his firm. Nothing short of this would amount to the "direct significant financial gain" from "the adoption of proposed legislation," or influencing a "legislator's vote on a proposed matter . . . by the promise of payment of money or . . . employment," that alone will amount to a conflict of interest within the scope of the Legislative Ethics Act.

Consequently, unless the Committee receives a sworn complaint charging that a legislator has cast a vote under these circumstances or a written request for advice stating that such circumstances will occur, it has no foundation on which to take official action. The Committee has not been authorized to delve into suspicion and conjecture. Nor has it been authorized to consider whether situations other than those spelled out in the Legislative Ethics Act may produce a prohibited conflict of interest. The Legislature must do that job, if it is to be done at all.

In one respect it is unfortunate that the Committee lacks a basis to take official action. Charges have been made, have received wide publicity, and perhaps have damaged the individuals involved as well as public confidence in the legislative process. It is reasonable to assume that the Legislature wanted the Ethics Committee to serve as an instrument for resolving such issues rather than leave them subject to charges and countercharges in the news media. The Committee therefore may wish to consider pointing out to

concerned legislators the damaging effects upon individuals and the Legislature as a whole when public accusations are made that the author is unable or unwilling to support with a sworn statement.

Yours very truly,
Jon A. Lund
Attorney General

October 30, 1973

Hon. Richard D. Hewes, Chairman
Legislative Ethics Committee
State House
Augusta, Maine 04330

Dear Representative Hewes:

On September 20, 1973, I received a copy of a letter from Senator Richard N. Berry to you requesting a meeting of the Legislative Ethics Committee to determine what action the Committee should take in connection with certain statements which have been made by Representative Stanley Sproul of Augusta on numerous occasions charging that I have a conflict of interest with respect to dealings of my firm, The James W. Sewall Company, of Old Town, with the State of Maine.

As you know, the Committee held a meeting on October 17, 1973 in response to this request and at that time Representative Sproul was asked to specify, as required by statute, under oath and in writing, any facts which he may have had concerning any conflicts of interest. I indicated at the time that I welcomed such specifications and was prepared to respond to them at a public hearing. Representative Sproul did not file any specifications with the Committee and the Committee adjourned for lack of any matter before it on which to act.

Over a week ago Representative Sproul again renewed some of his allegations in the press and promised to take whatever action was necessary to bring the matter again to the attention of the Ethics Committee. I have waited patiently for Representative Sproul's specifications but none have been forthcoming. Accordingly, I have decided to take the initiative to bring the matter before the Committee and the public.

It seems to me that the entire question of the propriety of legislators transacting businesss with State government should be finally clarified. Since there has been a great deal of public speculation as to whether I had a conflict of interest because of the dealings of my firm with the State Forestry Department regarding work which the Company completed for that Department with respect to the spruce budworm study, which work consisted of aerial photography and photo interpretation, I hereby request that the Committee issue an advisory opinion as to whether or not I in fact had a conflict of interest with respect to that contract. It would seem to me that these facts furnish a proper vehicle for an inquiry into the question of whether I have a conflict of interest.

I pledge my full cooperation to the Committee in any investigation or inquiry which it may undertake in the solution of this problem. In that respect I would like to suggest that the Committee, at the same time that it inquires into my situation, conduct a detailed study of any necessary amendments to the existing statutes relating to conflict of interest in order that all legislators may be aware of the exact parameters of their actions. I, for example, have been advised by two Attorneys General that I have no conflict of interest by virtue of my business relationship with the State. However, if I am going to be continually subjected to attack because of that relationship and if other legislators who may now or hereafter conduct similar arm's-length transactions may also be victimized by unsubstantiated accusations, I think that the Legislature should consider the threshold question of whether legislators should transact business at all with the State and, if so, upon what terms.

I sincerely believe that legislators who make charges of conflict of interest should be made responsible for their actions, that the boundaries of the conflict of interest area for legislators should be better defined, and that some protection should be afforded those

persons against whom spurious allegations of conflict of interest are made.

I can assure you that I will do my best to comply with any decision of your Committee.

Yours truly,

Joseph Sewall
Senator, District 27

To: The Honorable Richard D. Hewes
Speaker of the House
of Representatives and
Chairman, Legislative Ethics Committee

COMPLAINT

State Representative Stanley E. Sproul as an elected official and as a private citizen, complains against State Senator Joseph Sewall as follows:

1. This complaint is brought under the Legislative Ethics Act pursuant to Title 3, Section 381, Maine Revised Statutes Annotated.

2. Senator Joseph Sewall has been the Chairman of the Appropriations Committee since 1969.

3. Senator Joseph Sewall, both in his capacity as Chairman of the Appropriations Committee and in his capacity as a member of the Senate when that legislative body has convened as a whole, has consistently sponsored, voted on, and moved for the enactment of proposed appropriations legislation.

4. The Appropriations Committee is one of the most powerful and influential organs of the State government. The Appropriations Committee determines for the most part the limits of allocations upon which departments of the State must depend. In effect, the "power of the purse" of the Legislature lies in the Committee chaired by Senator Sewall.

5. Senator Joseph Sewall, Chairman of the Appropriations Committee, is also the President, Treasurer, and a Director of the JAMES W. SEWALL COMPANY, an engineering firm that has performed compensated professional services for various state agencies for several decades, including over one-half million dollars worth of business during the time Senator Sewall has chaired the Appropriations Committee. (See Appendix 1 for a partial list of checks paid to the Sewall Company by various State agencies for fiscal years 1969-70, 1970-71, 1971-72, 1972-73, and the first two months of 1973-74).

6. Senator Sewall has consistently sponsored, voted on, and moved for the enactment of proposed appropriations legislation in full knowledge and expectation that his firm has done and will continue to do substantial amount of business with the State, business amounting to hundreds of thousands of dollars. The adoption of proposed appropriations legislation, therefore, has resulted and in the future will result in direct significant financial gains to the Sewall Company and, through his company, to Senator Sewall himself.

7. This direct significant financial gain from the adoption of proposed legislation amounts to a conflict of interest within the scope of Section 382 of the Legislative Ethics Act (3 M.R.S.A. §382).

8. When the Chairman of the Appropriations Committee also is the President, Treasurer, and a Director of a private firm that transacts hundreds of thousands of dollars worth of business with the State, a relationship is created which could result in misconduct. This relationship falls squarely within the scope of the Legislative Ethics Act. In Section 371 of that Act (3 M.R.S.A. §371), the legislature spoke clearly and unequivocally about the necessity to maintain public confidence in government and to maintain the Maine Legislature's high reputation for progressive accomplishment.

> If public confidence in government is to be maintained and enhanced, it is not enough that public officers avoid acts of misconduct. They must also scrupulously avoid acts which may create an appearance of misconduct.

9. Senator Sewall has failed to scrupulously avoid acts which may create an appearance of misconduct in that he has maintained a dual role as the President, Treasurer and a Director of a company transacting substantial business with the State and as the Chairman of the Committee which as a practical matter votes to appropriate the monies out of which various state

agencies compensate the Sewall Company. However circumspect the Sewall Company may be in its business relationship with the State, there is a shadow of suspicion. If several firms, all equally qualified, bid to perform a needed service, it is only natural to suspect that a State department will turn, through courtesy, instinct, or the hope of future consideration, to the company headed by the man whose power to shape the department's budget is substantial because he chairs the Appropriations Committee.

WHEREFORE, Stanley E. Sproul respectfully requests that the Committee on Legislative Ethics conduct public hearings to investigate the conflict of interest of Senator Joseph Sewall and issue an opinion or opinions thereon, and exercise all other powers and duties and take such further action as is necessary to effect the purpose of the Legislative Ethics Act.

Dated November 2, 1973

STANLEY E. SPROUL

STATE OF MAINE
CUMBERLAND, ss.

Date November 2, 1973

Personally appeared the above named Stanley E. Sproul and made oath that the foregoing complaint by him made is true to the best of his knowledge and belief.

Before me,
Justice of the Peace

BEFORE THE COMMITTEE ON
LEGISLATIVE ETHICS
OF THE STATE OF MAINE

In Re Senator Joseph Sewall
of Penobscot

OPINION OF THE COMMITTEE

A three day public hearing was held on November 19, 20, and 21 1973 to consider a request for an advisory opinion filed by Senator Joseph Sewall of Penobscot and a Complaint executed under oath by Representative Stanley Sproul of Augusta.

Senator Sewall's request for a ruling, dated October 30, 1973, asked the Committee to advise him whether he "in fact had a conflict of interest with respect to a contract to survey spruce-budworm damage for the Forestry Department. The request suggested that the facts surrounding this contract would furnish an appropriate vehicle for determining whether he presently has a conflict of interest with respect to appropriations matters.

Representative Sproul's Complaint raised two related, but different, issues. First, it questioned if, because Senator Sewall sponsored, voted for and moved enactment of proposed appropriations legislation, and because the James W. Sewall Company performed, and will in the future perform, substantial compensated services for the State, the adoption of appropriations legislation was "proposed legislation" resulting in "a direct significant financial gain" to Senator Sewall within the meaning of Section 382 of the Ethics Act (3 M.R.S.A., §371-385). Second, the Sproul Complaint alleged that Senator Sewall's chairmanship of the committee on Appropriations and Financial Affairs (hereafter referred to as the Appropriations Committee), while his firm does business with State agencies, "could result in misconduct", or "may create an appearance of misconduct" or raises "a shadow of suspicion".

The Committee inquired, not only into these two charges, but also into possible conflicts publicized by the news media, some of which were of doubtful relevance. The Committee examined each contract for personal service between the James W. Sewall Company and any State agency during the past five years, and heard the sworn testimony of witnesses from the State Planning Office, the Department of Environmental Protection, the Bureau of Taxation, the Department of Parks and Recreation, the Forestry Department, the Department of Inland Fisheries and Game, the Bureau of Public Improvements, the Transportation Department, the Land Use Regulation Commission and of twelve other witnesses. In addition to contracts for personal services, State records show hundreds of minor transactions with the Sewall firm, such as the purchase of a print from an aerial photograph, a map, or copying services

of various kinds. Lack of time did not permit a detailed examination of these purchases, and furthermore the connection between these transactions and the appropriation process is miniscule and prices are standardized.

SUMMARY OF CONCLUSIONS

Based on the evidence received at the hearing, the Committee concludes that Senator Sewall has conducted himself so as to avoid any possible conflict of interest. He has not solicited or discussed firm business with State departments or agencies since becoming a member of the Senate and has refrained from participating in hearings, debate, or votes whenever he anticipated that the legislation under consideration might possibly result in payment to the Sewall Company.

Consistent with tradition, Senator Sewall, acting for his Committee, has sponsored and moved the enactment of General Fund Appropriations Acts, and he has also introduced amendments to the Appropriations Act near the conclusion of a Legislative session. Such amendments are traditionally introduced by the Chairman of the Appropriations Committee only after agreement by a party caucus, the Appropriations Committee or the leadership of the Legislature as an indication to other legislators that the requisite understandings have been reached. Neither sponsorship of the Appropriations Act nor introduction of amendments thereto was, therefore, the kind of discretionary act of Senator Sewall himself that might be subject to the influence of a conflict of interest.

Senator Sewall has also voted for General Fund Appropriations Act. The evidence shows that most funds used to compensate the Sewall firm for its services were neither voted on by the Appropriations Committee nor part of the General Fund Appropriations Act. To the extent the Act did contain appropriations that might eventually be used to pay the Sewall firm for services, the amounts involved either were demonstrably insignificant, or were for services rendered to the Bureau of Taxation at no profit to the James W. Sewall Company.

Each and every one of the 11 representatives of the concerned State agencies who were called to the hearing testified categorically that while Senator Sewall has been Chairman of the Appropriations Committee the Senator has **never** discussed Sewall Company business with him. Further, none had ever heard of any rumors to the effect that he conducted such discussions with other state employees. All denied having seen or heard of Sewall employees attempting to use the Senator's position to influence the decisions of any State agency.

Consequently, the Committee concludes that, in view of the manner in which Senator Sewall has conducted his legislative and business affairs, there is no inherent conflict between his position as Chairman of the Committee on Appropriations and Financial Affairs and his position as owner of the James W. Sewall Company. The Committee finds, moreover, that there has been no "appearance of misconduct", as the complaint alleges. On the contrary, after minutely scrutinizing his activities, the only possible conclusion is that Senator Sewall has meticulously "bent over backwards" to avoid any possible appearance of misconduct. The complaint therefore cannot be substantiated and, in response to Senator Sewall's request for ruling, the Committee finds no conflict of interest. The balance of this opinion will discuss the reasons for these conclusions.

THE LEGISLATIVE ETHICS ACT

The Legislative Ethics Act was passed in 1971 (Chapter 146; 3 M.R.S.A. §§ 371 et seq.) and extensively amended the following year (Chapter 602). As originally introduced, the Act contained an extended Statement of Purpose, several sections outlining legislative improprieties, and the sections that created the Legislative Ethics Committee. As passed, the Act contained only the Statement of Purpose and the sections creating this Committee. All sections defining breaches of ethics had been stricken, and the Committee had merely investigative authority without subpoena or enforcement power. The next Special Session was presented with a bill to amend the Act by restoring a

definition of conflicts of interest, broadly drawn, and by giving this Committee subpoena power and limited enforcement authority. As passed by the Legislature, the definition of a conflict had been narrowed considerably, and the Committee's previous authority to investigate conflicts on its own initiative had been withdrawn.

The core provisions of the Ethics Act are Sections 381 and 383, creating the Committee and defining its authority, and Section 382, which defines a conflict of interest for purposes of the Act, and necessarily therefore for this Committee. Section 381 confines the Committee to issuing advisory opinions "on request of any Legislator...involving himself" and to investigating an alleged conflict "only after a person has filed a complaint under oath...specifying the facts". Section 382 provides that, for purposes of the Act, a Legislator has a conflict of interest "when the adoption of proposed legislation will result in a direct significant financial gain" to the Legislator, his employer, a corporation in which he owns stock, or designated members of his family. The Act provides only one consequence of a finding that a conflict exists; the Legislator concerned is precluded from voting on any question in connection with the conflict.

The case before the Committee points up three issues requiring interpretation of this Act. First is the question whether the committee may deal with a charge that rests chiefly on past events. The Committee's only remedy is to preclude voting, necessarily looking to the future. The Act in general strongly suggests that the Committee was intended to deal with issues raised with respect to pending legislation. Strictly interpreted, both the complaint and request for ruling therefore could well be considered untimely. The events relied on by the complaint and the request for ruling, however, while now past, are also certain to recur unless circumstances change. Thus both may be construed to ask for relief the Committee would be authorized to grant, at least with respect to the forthcoming special session.

Second, the complaint requires an attempt to define the causal relationship implied by the phrase "will result in a direct significant financial gain". In one sense, obviously, appropriations legislation is a **sine qua non** of all State activities, and all State contracts in that technical sense "result" from appropriations measures. Equally obvious, many additional factors may enter into a business transaction with the State, for example, administrative decisions to spend an appropriation, to spend it on a particular project, to hire a private firm and to employ one particular firm. Should a Legislator be held to have had a conflict of interest whenever, with hindsight, legislation on which he voted can be pieced into a chain of causation leading to a gain he has realized? The Committee believes the Act's requirement that a gain be a "direct" result of legislation precludes any such conjecture. Since, moreover, the principal objective is to insure that votes are not influenced by thoughts of personal gain, the Act should be read to provide that a conflict will be deemed to exist only if a gain to the voting legislator is reasonably foreseeable when he votes.

Third, the Sproul Complaint alleges that a conflict exists because there is the possibility, appearance, or suspicion, that Senator Sewall's position could bring him favored treatment. Statutory interpretation aside, the evidence demonstrates that in fact this has not happened. Both the dollar volume and the relative proportion of business done by the Sewall firm with the State have steadily decreased since Senator Sewall became Chairman of the Appropriations Committee, and the Committee saw no credible evidence of favoritism because of his position. It is clear, however, that the Committee has not been given authority to adjudicate possibilities, appearances or suspicions of conflict, and certainly not shadows of any of them, despite generous language in the Statement of Purpose of the Legislative Ethics Act. The Statement of Purpose is not an operational part of the Act and does not, in any event, purport to strike a balance among the opposing values it sets forth. That balance was struck when the Legislature adopted Section 382, defining a conflict of interest for purposes of this Act. As noted earlier

that definition deals only with actualities, not suspicion, possibility or appearance.

That is, whether the evidence shows a likelihood that Senator Sewall will be voting on proposed appropriations legislation he has, or should have, reason to foresee will provide funds from which his firm will receive payment for services rendered to the State. The Complaint also urged the Committee to find that Senator Sewall's position had or could result in favoritism toward his firm. Although the Committee believes this aspect of the complaint is not within the scope of the Legislative Ethics Act, because of the extensive publicity given it, the evidence bearing on this issue will be discussed also.

The Appropriations Process

During the summer and fall of even numbered years State departments and agencies prepare estimates of the revenues they will require to operate during the succeeding two fiscal years. These estimates are reviewed by officials of the Budget Office and the Governor, and then incorporated, along with additional information, into the biannual Budget Document submitted to the Legislature. In this process, initial estimates and requests are almost invariably decreased.

The Appropriations Committee conducts open hearings on the budget. Representatives from each state department and agency appear to testify and respond to questions about their particular budgets. After concluding their hearings, members of the Appropriations Committee meet in executive session to consider the budgetary requests. No records of votes taken during executive sessions were kept by the Committee.

The Committee's decisions are incorporated into a revised appropriations bill. Traditionally the Chairman of the Appropriations Committee sponsors it and moves its passage. A somewhat similar process occurs during special session without, however, the necessity for a complete budget document.

It is not disputed that Senator Sewall has performed the traditional functions of an Appropriations Committee Chairman and also has voted on the appropriations bill as a whole. Contrary to the assumption made by the complaint, however, to sponsor or vote on the general appropriations act was not automatically equivalent to voting on proposals that would result in a direct financial gain to the Sewall firm. On the contrary, the evidence demonstrates that Senator Sewall never knowingly cast such a vote and with insignificant exceptions never unintentionally did so.

The Sewall Contracts

During the period 1969 to 1973, Senator Sewall's firm performed major services for the Bureau of Taxation, the State Planning Office, the Department of Environmental Protection, the Highway Commission (later the Transportation Department), the Department of Inland Fisheries and Game, the Forestry Department, and the Bureau of Public Improvements. The bulk of the funds involved came either from dedicated revenues, with which the Appropriations Committee has no connection, or federal funds that likewise are not subject to Appropriations Committee approval, or from bond issues or other legislation that is separated from the general fund appropriation process. For example, highway funds are the proceeds of fuel taxes, which are dedicated revenues allocated by the Transportation Committee of the Legislature, not Appropriations. Almost two-fifths of the Sewall firm's payments for State work came from this source. Similarly, the Department of Inland Fisheries and Game, for which the Sewall firm did a modest amount of work, derives its revenues from the sale of licenses, except for a biannual appropriation of $10,000 to reimburse the expense of finding lost persons. Allocations are approved by the Fisheries and Wildlife Committee. Forestry Department funds used to pay the expenses of two Sewall contracts to survey budworm damage came from a combination of a federal grant, a special assessment on forest landowners, and some State general funds provided by a separate legislative document on which Senator Sewall testified he had not voted. State Planning Office contracts with Sewall firm were compensated exclusively

from federal funds. Civil engineering work for the Bureau of Public Improvements and some work done under the auspices of the Department of Environmental Protection were paid for with funds derived from two bond issues. On this and some other occasions authority to make expenditures that have included payments to the Sewall firm derived from legislation enacted outside the general appropriations bill. Senator Sewall testified that he had neither discussed nor voted on all such legislation the Committee could identify.

Thus most funds used to compensate the Sewall firm for its work came from sources outside the "appropriations legislation" mentioned in the complaint. The Bureau of Taxation was a significant exception. For over fifty years the Sewall firm has gathered data used to assess land in the unorganized territories and has performed a variety of related services for the Bureau. The funds used to pay for that work have come from the Bureau's general fund appropriation each year. Senator Sewall testified that he did not participate in Committee discussion or votes on that section of the Bureau's appropriation, although he voted on the entire Appropriations Act once it reached the floor. It appears, however, that none of the work done for the Bureau of Taxation resulted in a gain for the Sewall firm or Senator Sewall. By agreement with the Bureau, the work had always been done at cost, and the firm's accountant testified that over the past five years this work actually has been done at an aggregate net loss exceeding $4,000..* Since a change in the method of assessing timberland has eliminated nearly all the work involved, the issue is moot in any event.

*In theory the overhead expenses charged to the Bureau included a portion of the Senator's salary, but the amount involved was scarcely significant.

Senator Sewall's Voting Practices

Members of the Appropriations Committee testified without exception that Senator Sewall repeatedly excused himself from presenting, discussing or voting on items he thought might contain a payment his firm would ultimately receive and usually left the Committee room. Several witnesses thought the Senator was excessively scrupulous. Senator Sewall's own undisputed testimony was that he invariably declined to participate when he thought an item in the appropriations bill might include funds that would ultimately be used to pay his firm. There can be no doubt that he did his utmost to observe this rule. Thus, contrary to the first charge in the complaint, it seems that Senator Sewall has not in fact, sponsored, voted on, or moved enactment of, appropriations legislation that has resulted in direct financial gain.

The Appearance of Impropriety

The second part of Representative Sproul's complaint alleges the possibility or at least "the suspicion" that the Sewall firm would be awarded contracts, even if unintentionally, because of Senator Sewall's position as head of the Appropriations Committee and suggested that among several firms, "equally qualified", Senator Sewall's post would give his firm a special advantage. The Committee was unable to locate a single instance when this had occurred. Moreover, the head of every State department that had done appreciable business with the Sewall firm testified unequivocally that Senator Sewall had never solicited, or even discussed, firm business with them.

The nature of the Sewall firm's work and its special qualifications give it a natural predominance that would seem to make a preference for the Sewall firm defensible on the soundest professional grounds. The Sewall firm is engaged in forestry, on the ground and from the air, aerial photography, photo interpretation, photogrametric mapping, map-making, land use planning, civil engineering, and a variety of related activities. It employs 125 people, owns two airplanes, air photo equipment, and elaborate devices for mapping and copying. It is the only firm in Maine so equipped, and it has accumulated aerial photos and maps of every part of the State. Other firms in Maine and in the Northeast offer one or a few of the services Sewall can provide;

none can provide them all. Of course, these very services are essential parts of governing, taxing, and planning for the resources of Maine. Consequently, when the Sewall firm insists, as it has, upon competitive bidding before it accepts a State contract, the State may be hard put to comply. Many services for which the Sewall firm has been employed are simply not available from other "equally qualified" firms.

* The Senator himself volunteered two exceptions. Early this past fall, he called William Adams, the head of the Department of Environmental Protection, to ask whether federal funds would be available to pay the cost of designing a sewage disposal system for the town of Fort Fairfield. The Sewall firm had been doing this work, pursuant to a contract with the town, for some four years and had accumulated unpaid charges exceeding $100,000. Also, shortly after the Luken's complaint was first publicized in October, he telephoned Ronald Poitras to ask for information about the charges, since he had no personal knowledge of the facts.

The Lukens Charge

It was suggested to the Committee that an example of apparent favoritism to the Sewall firm could be found in a transaction between the State Planning Office and one John Lukens, a photo-interpretation consultant from Rhode Island. In his testimony before the Committee Lukens contended that the State Planning Office had unfairly and improperly refused to award a contract to accomplish aerial photography and photo-interpretation for use on the Washington and Hancock County sectors of the coastal plan to Aero-Maine Services of Rhode Island, and himself as its consultant. He charged the Planning Office with attempting to twist competitive bidding procedures so that the contract he sought could ultimately be awarded to the James W. Sewall Company, despite its failure to submit a timely bid.

Based on the testimony received at the hearing, the following is a fair description of these events. In December, 1972, the State Planning Office published a notice in the Portland Press Herald soliciting proposals for a contract to gather data for the Washington and Hancock County segments of the Coastal Plan. A similar plan had been completed for the Penobscot Bay Region, and data for a plan gathered for the Mid-Coast area. In both cases the aerial photography and interpretation had been accomplished by the James W. Sewall Company pursuant to negotiated contracts with the Planning Office. Satisfied with the earlier work, the Coastal Planning unit of the Planning Office had sought to negotiate a similar contract with the Sewall firm for the Washington and Hancock County project. The attempt to negotiate a contract was rebuffed, exactly when and by whom is not clear. The decision was attributed to the insistence of the Sewall firm, to the Purchasing Office and to the Planning Director, Phillip Savage, depending on the witness. In any event, competing proposals were invited and a bid opening scheduled for 10:45 A.M., January 30, 1973. At the same time it was clear that the Coastal Plan Supervisor, Ronald Poitras, who would have the most to say about an award, preferred to use the Sewall firm on the basis of its past performance and his personal confidence in its work. His personal experience was in part responsible for that confidence, since he had worked for the Sewall firm one year between college and graduate school. Poitras testified that he expected a Sewall bid and, it may be inferred, was probably predisposed to accept it. Dr. Lukens and others attempted to make a great deal of this prior judgment, but the Committee believes that Poitras's attitude was reasonable under the circumstances and that he would have been less than candid with the Committee had he not acknowledged it.

Aero-Marine Surveys, a Rhode Island aerial photography firm, responded to the newspaper ad, obtained a set of contract specifications from the Coastal Planning unit, and set about preparing a bid. Lukens became associated with Aero-Marine in this effort and evidently prepared most of the proposal. Lukens was initially skeptical of their ability to compete with the Sewall firm, which he assumed would be bidding. After a visit

to the Planning Office, during which Lukens requested and obtained several changes in the specifications, he was reassured, and on January 30, when the bids were due, dispatched a messenger to Augusta with an Aero-Marine bid.

In the meantime, during the week ending January 30, Poitras had spoken with someone at the Sewall firm, who wanted to know when the bid was due. Poitras testified that he responded "the end of the month", forgetting that the month ended January 31, not January 30 when the bid opening had been scheduled. On January 30 Poitras had received one bid from Prentice & Carlisle, but none from the Sewall firm. He testified that he therefore called Theodore Tryon, the chief forester for Sewall, to inquire. Tryon told Poitras the bid was then being typed and that he had assumed it was due the following day, January 31. At that point there was not enough time to finish the bid and get it to Augusta by the scheduled opening time of 10:45.

Shortly after this conversation, the Aero-Marine messenger arrived at the State Purchasing Office, expecting a bid opening. She found none scheduled and eventually complained to the State Purchasing Officer, Linwood Ross. Ross called Poitras, who expressed a wish to postpone the bidding deadline, feeling responsible for the Sewall firm's failure to submit a timely bid. Since there was insufficient time to notify other bidders of a postponement and since Aero-Marine had sent a messenger to Augusta, Ross would not permit a postponement. Poitras then took the Prentice & Carlisle bid to the Purchasing Office, and the two bids were opened, recorded, and delivered to Poitras for evaluation. The Prentice & Carlisle bid included only part of the project. The Aero-Marine bid included the entire project, but hedged on the completion date, disputed several specifications, and evidently did not commit Aero-Marine to fixed price. A Sewall bid arrived at the Planning Office approximately two hours after the bid opening. Poitras, however, later told the Sewall firm that the bid opening had not been postponed, and the contract would probably go to Aero-Marine.

As it turned out, the contract was not awarded at all. The reason given to the bidders was a loss of anticipated funding. The record shows not a little confusion and some inconsistency over just what funds were lost. Poitras tesitified that the Coastal Planning Unit had not relied on any specific source of funds when it invited bids. The Planning Director, Philip Savage, testified that his office had expected to use funds authorized by Congress in October, 1973, when the Coastal Resources Planning Act was passed and signed by the President and that he had expected the funds to be appropriated by Congress and in the hands of State agencies before the middle of 1973. Consequently, he testified, when he learned at the end of January that the President's budget message, submitted on January 29, requested no appropriation for Coastal Planning, he realized that the Planning Office would be unable to finance the proposed contract and decided not to award it. Contrary to this explanation, the letter advising bidders that the contract would not be let cited a Presidential order impounding certain funds as the reason. Poitras agreed that this was not accurate, and stated that his office had simply decided to spend such funds as it had in other ways and to use state employees to do the Washington and Hancock County work.

Dr. Lukens argued that this confusion supported his belief that the Planning Office had tried to favor the Sewall firm and was trying to see that it eventually received the contract. The Committee concludes, however, that none of these events have any probative value in the investigation. No version of the events implicates Senator Sewall or any of his employees in any attempt to secure the work in spite of the failure to submit a timely bid. It is clear that the contract was not awarded and that it was not in fact being husbanded for the Sewall firm. The work was being done, albeit behind schedule, by employees of the Planning Office, probably at a cost lower than the cost of hiring a private firm. It is not apparent that the attempt to postpone the bid opening represented more favorable treatment for the Sewall firm than, for example, Lukens had received when specifications were

changed at his request. In any event, the Committee could not conclude that consideration given the Sewall firm, if any, had anything to do with Senator Sewall's legislative position. A more plausible explanation was simply confidence in the firm's work.

The propriety of the decision to reject all bids was not within the scope of the Committee's inquiry, but we note that the Attorney General considered that action perfectly lawful.

The most that can be said is that, in light of later developments, it was unfortunate events of the bidding process made it appear that Senator Sewall or his firm might have had some influence over the decision not to award the contract. The evidence shows, however, that this was the first time the Planning Office had used competitive bidding, and it is evident that its staff was not sufficiently familiar with the process and some of the unwritten customs that are normally part of it. The Committee understands that the Attorney General, as a result of an investigation by his office, has recommended action to correct such situations and that the action recommended has been taken.

Recommendations

In sum, the Committee has found neither conflicts of interest nor the appearance of conflicts of interest. To rule, as the Sproul complaint urges, that there is an intrinsic conflict between the Chairmanship of the Appropriations Committee and ownership of a firm that performs substantial compensated services for the State would, in our view, read into the Ethics Act prohibitions the legislature deliberately chose not to include. The argument for an inherent conflict would apply with equal force to all members of the Legislature. It would thus pose the issue whether any Legislator should do business with the State. That issue was deliberately placed outside this Committee's jurisdiction. The questions it raises must be answered, if at all, by the Legislature as a whole, by the electorate, or by the Courts, and it would be inappropriate for this Committee of the legislative leadership to intimate an opinion with respect to them.

The Committee suggests, however, that the Legislature give serious consideration to eliminating all assignments of legislators to Committees whose work can have an appreciable impact on their private economic lives. We include in this category Committees that consider measures affecting a legislator's business or profession as such, as well as Committees that may affect, or appear to affect, the availability or award of State contracts.

It is worth noting that the Committee would have had some difficulty establishing by independent evidence whether or not Senator Sewall had participated in Committee decisions that might affect an appropriation used to pay the Sewall Company had it not been given the benefit of testimony from plainly reliable witnesses. A written record would have been preferable, in view of the complexity of Appropriations Committee proceedings. The Ethics Committee therefore recommends that a method be devised for recording Committee votes, particularly in the Appropriations Committee, including a record of the members participating in each vote.

Richard D. Hewes, Chairman
Richard N. Berry
Joseph E. Brennan
Larry E. Simpson
John L. Martin

Separate Concurring Opinion of Senator Joseph E. Brennan

I concur in the committee's report. I would make, however, some additional observations.

There is no way to measure the damage these disproven charges have done to a decent man's reputation for fair dealing and personal integrity. To whatever extent the accusations harmed Senator Sewall's good name, the harm was done unfairly. Our unanimous conclusion that the allegations were unjustifiable will remove, I hope, whatever baseless doubt that may have been created by them.

But the fact remains that, in the minds of many, judgment often anticipates rather than follows a careful study of the

evidence surrounding widely publicized charges of political wrongdoing. That fact alone should lead any fair-minded person to find fault with the careless way in which these charges were brought against an innocent man.

At a time when confidence in government is being eroded almost daily by carefully documented or self-admitted breaches of public responsibility, and even criminal behavior in high office, legislators have a special duty to avoid words or actions that might cause people to mistake honorable men for probable and proven wrongdoers.

SEPARATE CONCURRING OPINION OF REPRESENTATIVES LARRY E. SIMPSON AND JOHN L. MARTIN

Representatives Simpson and Martin agree with the Committee opinion and Senator Brennan's concurring opinion, but believe the following additional statement should also be made.

We cannot condone the manner in which Representative Sproul used the press to publicize the charges in his complaint, before the Committee had a chance to consider them, and to publish other charges that he was unwilling to include in a formal complaint.

Representative Sproul first made his charge of conflict, not in a complaint to the Committee, the existence of which was well known to him, but to the press in an announcement published September 11, 1973. He further added that "he did not know whether" the Sewall firm's State business had increased since the Senator became Chairman of the Appropriations Committee. On the contrary, testimony before the committee documented that the volume of work contracted to the Sewall firm had steadily declined during the period Representative Sproul examined. In the same announcement, Representative Sproul pointed to a $10,000 check linked to dates of July 25 and 28, and said, "I just can't imagine what could be done in two days that was worth ten thousand dollars." Committee investigation showed that the dates were only dates of the invoices paid by that check and were based on work extending over several months.

Representative Sproul repeatedly protested to the Committee that he had not charged Senator Sewall personally with wrongdoing. His public statements, however, made just such charges. The day of the Committee's first meeting, Representative Sproul released to the press a letter addressed to the Committee in which he stated that two complaints "of a serious nature" had come to his attention that, if true, would indicate Senator Sewall's dealings with the State had not always been "above reproach." The letter did not say what those complaints were. One of them, as it turned out was the Lukens' charge. Not only did the Committee's investigation reveal nothing in any way implicating either the Senator or his firm in the events of which Lukens complained, his letter of complaint did not do so. This letter was the basis for Representative Sproul's charge. The second "serious" complaint was the camp charge. When Representative Sproul announced these complaints, admittedly he had not investigated either one, yet he was willing to characterize both publicly as "serious" and as indicating dealings had not been "above reproach". These statements caused irreparable harm to Senator Sewall's reputation, as well as personal mental anguish and a considerable financial loss in defending against these charges, wholly without justification, as the Committee opinion shows.

Representative Sproul knew his charges were vague and his substantiating evidence poorly documented. His complaint, does not so much as mention them. Representative Sproul claimed to be using these charges as a vehicle to promote better legislative standards. However laudable that objective, it could scarcely justify the means used.

In the interest of open debate on all questions of public importance, our laws give, as they should, nearly total immunity from civil liability for defamatory statements about persons who hold public office. The McCarthy era showed us that determined abuse of this privilege by men who acknowledge no responsibility and hold to no principles but their own

self-aggrandizement can cause incalculable damage, not only to the chosen targets, but to our political process and the society it serves. Repetition of that national experience at this critical period in the life of Maine would be a tragedy. Prompt and unequivocal rejection by the public and by our peers in the Legislature is our strongest, really our only, safeguard against the politics of smear and innuendo. We suggest that our colleagues bear this in mind.

Dated: December 20, 1973.