

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
LEGISLATIVE RESEARCH COMMITTEE

SECOND SUMMARY REPORT  
TO THE  
ONE HUNDRED AND FIFTH LEGISLATURE  
VOLUME TWO

JANUARY, 1971



STATE OF MAINE  
LEGISLATIVE RESEARCH COMMITTEE  
STATE HOUSE  
AUGUSTA, MAINE 04330

December 28, 1970

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TO THE MEMBERS OF THE 105TH LEGISLATURE:

The Legislative Research Committee hereby has the pleasure of submitting to you Volume II of its report on activities for the past two years.

This volume relates to all remaining matters except for State Government Reorganization H.P. 1468, which was undertaken by the Committee in conjunction with the State Planning Office and previously published and released by that office under separate cover on December 2, 1970.

We of the Committee gratefully acknowledge our indebtedness to the many individuals, organizations and agencies for their valuable contributions to the work of the Committee and it is our hope that the information contained in this report will be of assistance to the Members of the 105th Legislature and the people of the State of Maine.

Respectfully submitted,

William E. Dennett  
Chairman  
Legislative Research Committee

## TABLE OF CONTENTS

	Page
Letter of Transmittal.....	i
Table of Contents.....	ii
 <b>Research Reports:</b>	
Environmental Improvement Commission.....	1
Associated Hospital Service.....	59
State Principals' Association.....	80
Women's Correctional Center.....	86
Liability Claims Against State Employees.....	100
Legislative Ethics.....	118
Wildlands Taxation.....	139
 <b>General Information:</b>	
Committee History.....	165
Committee Authority.....	171
Committee Rules.....	179
Committee Membership.....	182

STATE OF MAINE  
LEGISLATIVE RESEARCH COMMITTEE

REPORT ON LEGISLATIVE ETHICS AND  
REGULATION OF LOBBYISTS  
to the  
ONE HUNDRED AND FIFTH LEGISLATURE

JANUARY, 1971

Committee Publication 105-14

## LEGISLATIVE ETHICS

ORDERED, the Senate concurring, that the Legislative Research Committee is directed to study the subject matter of Bill, "An Act Relating to Legislative Ethics," House Paper 909, Legislative Document 1170, with additional consideration toward regulation of the practice of lobbying to determine whether the best interest of the State would be served by enactment of such legislation; and be it further

ORDERED, that the Committee report its recommendations, together with such legislation as it deems appropriate, at the next regular or special session of the Legislature.

HP 1177	House of Representatives	In Senate Chamber
Richardson	Read and Passed	Read and Passed
Cumberland	May 7, 1969	July 1, 1969
	Sent up for concurrence	In concurrence

SUBCOMMITTEE ON  
LEGISLATIVE ETHICS AND  
REGULATION OF LOBBYISTS

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The 104th Maine Legislature by Joint Order House Paper 1177 passed at the 1969 regular session directed the Legislative Research Committee to study the subject matter of House Paper 909, Legislative Document 1170, An Act Relating to Legislative Ethics with additional consideration towards regulation of the practice of lobbying and to determine whether the best interests of the State would be served by enactment of such legislation.

The issues presented are important and far reaching but should not be misconstrued to mean that the Maine Legislature is unethical or that the practice of lobbying is in any way corrupt, rather it should be recognized that Governmental ethics in the past several years has commanded nationwide attention as evidenced by the Act assigned for study which originated from the Committee of State Officials on Suggested State Legislation of the Council of State Governments. A review of the states reveals that this movement began in 1954 with the enactment of a New York statute dealing with the problem of legislators' ethics. Following the State of New York's lead statutes have been adopted on the subject in Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Texas and Washington. Since 1968 a number of other jurisdictions have attempted to enact similar legislation or have studies under way.

Against this background the Committee held a series of meetings throughout the interim and addressed itself to both segments of the joint order, namely legislative ethics and regulation of lobbyists. During these deliberations the Committee



made a thorough review of legislation, rules and other requirements of each of the fifty states. The Committee also received the benefit of in-depth consultation with a representative sample of the lobby in respect to their function. In reporting its ultimate findings and recommendations based upon this study the Committee respectfully submits a brief commentary followed by implementing legislation.

#### LEGISLATIVE ETHICS

In respect to legislative ethics the Committee finds at present that the guidelines available to legislators are minimal.

Article IV, Part Third, of the Constitution of Maine provides in the following sections that:

Section 4. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

Section 7. The Senators and Representatives shall receive such compensation, as shall be established by law; but no law increasing their compensation shall take effect during the existence of the Legislature, which enacted it. The expenses of the Members of the House of Representatives in traveling to the Legislature, and returning therefrom, once in each week of each session and no more, shall be paid by the State out of the public treasury to every member, who shall seasonably attend, in the judgment of the House, and does not depart therefrom without leave.

Section 8. The Senators and Representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at, going to, and returning from each session of the Legislature, and no member shall be liable to answer for anything spoken in debate in either House, in any court or place elsewhere.

Section 10. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people.

Section 11. 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 and 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.

In addition to Constitutional consideration M.R.S.A. Title 17, §601 prohibits legislators from taking bribes:

§601. Bribery and acceptance of bribes by public officers

Whoever gives, offers or promises to an executive, legislative or judicial officer, before or after he is qualified or takes his seat, any valuable consideration or

gratuity whatever, or does, offers or promises to do any act beneficial to such officer, with intent to influence his action, vote, opinion or judgment in any matter pending, or that may come legally before him in his official capacity, shall be punished by a fine of not more than \$3,000 or by imprisonment for not more than 5 years.

Whoever accepts such bribe or beneficial thing, in the manner and for the purpose aforesaid, shall forfeit his office, be forever disqualified to hold any public office, trust or appointment under the State and shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 10 years. Sheriffs and deputy sheriffs within the several counties and constables, marshals, deputy marshals and other officers of police of the several cities and towns are declared to be executive officers within the meaning of this section. The enumeration of such officers shall not be held to exclude any other executive officer not specially mentioned herein.

The joint rules of both Houses preclude voting where a member's "private right, distinct from public interest, is immediately involved."

#### JOINT RULES

4. Members. No member shall be permitted to vote on any question in either branch of the Legislature or in committee whose private right, distinct from public interest, is immediately involved.

Both House and Senate rules make special provisions for excusing presence and voting where excluded by interest.

#### Rules of the House

19. Every member who shall be in the House when a question is put where he is not excluded by interest shall give his vote, unless the House for special reasons shall excuse him and when yeas and nays are ordered, no member shall leave his seat until the vote is declared; in all elections by the House, or on joint ballot of the two houses, no member shall leave his seat, after voting, before a return of the House is had.

#### Rules of the Senate

24. After a question is put to vote, no senator shall speak on it. Every senator who may be present shall vote unless excused by the Senate, or excluded by interest.

Individual House and Senate rules forbid their members from acting as counsel before legislative committees.

#### Rules of the House

14. No member shall act as counsel for any party, before a joint committee of the legislature, or a committee of the House.

#### Rules of the Senate

34. No member of the Senate shall act as counsel for any party before any committee of the Legislature.

Also, a Legislative Code of Ethics was adopted by the 100th Legislature which reads as follows:

"Any public office holder is charged with responsible conduct commensurate with the trust placed in him by the electorate. In a free government the official is entrusted with the security, safety, health, prosperity, and general well-being of those whom he serves. With such a trust high moral and ethical standards producing the public's confidence, with the reduction to a minimum of any conflict between private interests and official duties, should be observed. No state legislator will accept any employment which can possibly impair his independence and integrity of judgment nor will he exercise his position of trust to secure unwarranted privileges for himself or for others. The Maine legislator will be ever mindful of the ordinary citizen who might otherwise be unrepresented, and will endeavor conscientiously to pursue the highest standards of legislative conduct."

This code adjures a legislator to "endeavor conscientiously to pursue the highest standards of legislative conduct." The Committee recognizes the problem and states in the proposed Legislative Code to follow, that: "The Legislature cannot legislate morals and the resolution of ethical problems must indeed rest largely in the individual conscience. It was the Committee's feeling that the Legislature may and should, however, define ethical standards, as most professions have done, to chart the areas of real and apparent impropriety."

How to express these broad objectives in specific and enforceable statutory language was the Committees next consideration. Not necessarily in order of their importance, the Committee felt it was desirable to provide a more explicit standard for conflicts of interest, to establish a Committee on Legislative Ethics to advise legislators on conflicts of interest, to investigate reports of conflict of interest of legislators and lobbyists and to make recommendations to the Attorney General's Office on the basis of the investigations and to suggest more detailed legislation on bribery, fees, payments and gifts. Also the Committee saw merit in attaching a statement of purpose to clearly spell out the legislative intent.

Pursuant to this the Committee submits the legislation proposed on page        and recommends its adoption.

#### REGULATION OF LOBBYISTS

As to regulation of lobbyists, at present Article IV, Part Third, Section 6 of the Constitution of Maine provides that:

Each House, during its session, may punish by imprisonment any person, not a member, for disrespectful or disorderly behavior in its presence, for obstructing any of its proceedings, threatening, assaulting or abusing any of its members for anything said, done, or doing in either House: provided, that no imprisonment shall extend beyond the period of the same session.

Aside from the bribery previously cited, MRSA, Title 3, sections 311-316 deal specifically with legislative counsel and agents:

§ 311. Registration

Any person or persons accepting employment to act as legislative counsel or agent to promote or oppose, directly or indirectly, legislation by the Legislature shall within 48 hours after such employment cause his or their name or names to be entered upon a docket as provided, and all employers of such legislative counsel or agents shall within the same time cause their names to be entered upon the same docket as provided.

§ 312. Registration docket; maintenance and inspection

The Secretary of State shall prepare and keep a docket for the registration of legislative counsel or agents and of their employers, which docket shall be open to public inspection during the office hours of said Secretary of State and shall contain the names of legislative counsel and agents and of their employers, the addresses of each, the date and subject matter of the employment, and, by appropriate words, a designation of whether such employment is as counsel or agent or both. Such docket shall be so arranged and indexed that under the name of each employer shall appear the names of all legislative counsel or agents employed by him and that the name or names of each employer represented by any counsel

or agent shall appear under the name of such counsel or agent.

§ 313. No contingent compensation

No person shall be employed as a legislative counsel or agent for compensation dependent upon a contingency.

§ 314. Legislative counsel and legislative agent, defined

The term "legislative counsel" as used in this chapter shall be construed to mean any person who for compensation appears at any public hearing before committees of the Legislature in regard to proposed legislation. The term "legislative agent" as used in this chapter shall be construed to mean any person, firm, association or corporation that for hire or reward does any act to promote or oppose proposed legislation except to appear at public hearings before committees of the Legislature, and shall include all persons who for compensation shall approach individual members of the Legislature or members-elect thereof with the intent in any manner, directly or indirectly, to influence their action upon proposed legislation.

§ 315. Application of terms

This chapter shall not apply to state, county, municipal or quasi-municipal officials, or their regularly elected or appointed subordinates, who act for no compensation other than their ordinary salary or compensation as such public officials or subordinates.



§ 316. Penalties

Whoever violates any provision of this chapter shall be punished by a fine of not less than \$100 nor more than \$500, and the Attorney General shall cause prosecutions to be instituted for the violation of any of the provisions of said chapter. Any person, firm or corporation who shall falsely enter upon the docket the name or names of any person or firm as his or their legislative counsel or agent shall be punished by a fine of \$100 and shall be answerable in damages to the person or firm whose name or names has been so falsely entered.

The high moral standards of the members of the "third house" of the Maine Legislature are fully recognized by the Committee. However, the Committee also recognizes that members of the Legislature and the public have a right to know more about the lobbyists employment agreement. The Committee felt that the docket kept by the Secretary of State could be enlarged to state the legislation promoted or opposed by the lobbyist and to record the nature of compensation to be paid the lobbyist.

In essence, the Committee recommends that after the session the employers of lobbyists would be required to file a detailed account of the expenses related to lobbying they had incurred during the session, the specific nature of the legislation they had promoted or opposed, and their interest in it.

Accordingly, the Committee respectfully submits on page An Act Relating to Legislative Lobbyists and recommends its adoption.

AN ACT Relating to Legislative Ethics.

Be it enacted by the People of the State of Maine, as follows:

R.S., T. 3, C. 18, additional. Title 3 of the Revised Statutes is amended by adding a new chapter 18, to read as follows:

CHAPTER 18

LEGISLATIVE ETHICS

SUBCHAPTER I

STATEMENT OF PURPOSE

§371. Statement of purpose

1. The Maine Legislature enjoys a high reputation for progressive accomplishment. The vast majority of its members are public officers of integrity and dedication, seeking at all times to maintain high standards of ethical conduct.

2. The public interest is best served by attracting and retaining in the Legislature men of high caliber and attainment. The public interest will suffer if unduly stringent requirements deprive government "of the services of all but princes and paupers."

3. Membership in the Legislature is not a full-time occupation and is not compensated on that basis; moreover, it is measured in two-year terms, requiring each member to recognize and contemplate that his election will not provide him with any career tenure.

4. Most legislators must look to income from private sources, not their public salaries, for their sustenance and support for their families; moreover, they must plan for the day when they must return to private employment, business or their professions.

5. The increasing complexity of government at all levels, with broader intervention into private affairs, makes conflicts of interest almost inevitable for all part-time public officials, and particularly for legislators who must cast their votes on measures affecting the lives of almost every citizen or resident of the State. The adoption of broader standards of ethics for legislators does not impugn either their integrity or their dedication; rather it recognizes the increasing complexity of Government and private life and will provide them with helpful advice and guidance when confronted with unprecedented or difficult problems in that gray area involving action which is neither clearly right nor clearly wrong.

6. 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.

7. The Legislature cannot legislate morals and the resolution of ethical problems must indeed rest largely in the individual conscience. The Legislature may and should, however, define ethical standards, as most professions have done, to chart the areas of real or apparent impropriety.

## SUBCHAPTER II

### BRIBERY, FEES, PAYMENTS AND GIFTS

#### §391. Bribery of members of the Legislature

A member of either of the houses composing the Legislature of this State, or a person elected to become a member thereof, who asks, receives, or agrees to receive any bribe upon any understanding that his official vote, opinion, judgment or action shall be

influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or who gives or offers or promises to give any official vote in consideration that another member of the Legislature, or person elected to become such member shall give any such vote, either upon the same or another question, is punishable by imprisonment in a state prison not exceeding 2 years.

§392. Unlawful fees or payments

A member of the Legislature or any officer or employee of the Legislature who asks or receives or consents or agrees to receive any emolument, gratuity or reward or any promise of emolument, gratuity or reward or any money, property or thing of value or of personal advantage, except such as may be authorized by law, for doing or omitting to do any official act, or for performing or omitting to perform any act whatsoever directly or indirectly related to any matter in respect to which any duty or discretion is by or in pursuance of law imposed upon or vested in him, or may be exercised by him by virtue of his office, or appointment or employment or his actual relation to the matter including, without limiting the generality of the foregoing, approving or promoting the passage of legislation or resolutions or the confirmation of appointees, or the conduct of investigations, and a person who shall directly or indirectly offer or make such a transfer to any member of the Legislature or any officer or employee of the Legislature shall be guilty of a felony punishable by imprisonment for not more than 2 years or by a fine of not more than \$10,000 or both.

§393. Unlawful gifts

1. A member of the Legislature or any officer or employee of the Legislature who shall knowingly solicit, accept or receive any gift including money, service, loan, travel, entertainment, hospitality or other thing having a value of \$25 or more from a person under circumstances from which such member, officer or employee could reasonably infer that the gift was intended to influence him, or under which such gift could reasonably be expected to influence him, in the performance of his official duties, or was intended as a reward for any official action on his part and any such person who shall offer or make such a gift to any member, officer or employee of the Legislature, shall be guilty of a misdemeanor.

2. The term "gift" shall not include political expenditures and contributions governed by the election law.

SUBCHAPTER III

COMMITTEE ON LEGISLATIVE ETHICS, CONFLICTS OF INTEREST

§411. Committee on Legislative Ethics

1. Membership. The Committee on Legislative Ethics shall consist of the President of the Senate, the Speaker of the House, the Majority Floor Leader of the Senate, the Majority Floor Leader of the House, the Minority Floor Leader of the Senate and the Minority Floor Leader of the House.

2. Chairmanship. The chairmanship shall alternate in succeeding sessions between the President of the Senate and the Speaker of the House.

3. Compensation. The members of the committee shall be compensated for the time spent on attendance at meetings of the

committee and when engaged in the performance of duties under the instructions of the committee and authorization by its chairman at the rate of \$10 per day and actual expenses incurred. No compensation shall be paid for attendance at any meeting of the committee held while the Legislature is in session.

4. Authority. The committee shall have the authority:

A. To advise, on request, members of the Legislature on problems pertaining to possible conflicts of interest in matters under consideration by the Legislature.

B. To receive reports of conflicts of interest of legislators, legislative counsel and legislative agents.

C. To investigate reports of conflicts of interest and to make recommendations to the Attorney General on the basis of its investigation.

§412. Conflicts of interest

No member who has a substantial financial interest, direct or indirect, not shared by the general public, in a proposal before the Legislature or any committee or sub-committee thereof, or whose action may reasonably be expected to be influenced by a close professional, employment, business or family relationship with anyone to his knowledge having such an interest, shall promote or oppose in any manner such proposal unless he shall first have filed a written statement with the Committee on Legislative Ethics describing the nature of any such interest, which statement shall be open to public inspection.

## AN ACT Relating to Lobbyists

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 3, §§311-316, amended. Sections 311 to 316 of Title 3 of the Revised Statutes are amended to read as follows:

§311. Registration

1. Time limit. Any person or persons accepting employment to act as legislative counsel or agent to promote or oppose, directly or indirectly, legislation by the Legislature shall register within 48 hours after such employment ~~cause-his-or-their-name-or-names-to-be-entered~~ upon a docket as provided, and all employers of such legislative counsel or agents shall within the same time cause ~~their-names-to-be-entered~~ themselves to be registered upon the same docket as provided.

2. Registration not valid. Such registration is not valid for more than 30 days after the adjournment of a legislative session.

3. Termination of employment. Upon termination of the employment of a legislative counsel or agent, the fact of such termination and the date thereof shall be entered upon the docket at the direction of the employer.

§312. Registration docket; maintenance and inspection

1. Secretary of State to keep docket. The Secretary of State shall prepare and keep a docket for the registration of legislative counsel or agents and of their employers, which docket shall be open to public inspection during the office hours of said Secretary of State and shall contain the names of legislative counsel and agents and of their employers, the addresses of each, the date and subject matter of

the employment, the legislation to be promoted or opposed, the nature of the compensation to be paid the legislative counsel or agents, and, by appropriate words, a designation of whether such employment is as counsel or agent or both. Such docket shall be so arranged and indexed that under the name of each employer shall appear the names of all legislative counsel or agents employed by him and that the name or names of each employer represented by any counsel or agent shall appear under the name of such counsel or agent.

2. Statement of expenses.

A. It shall be the duty of every person, firm, association or corporation who employs a legislative counsel or agent to file an itemized statement in the office of the Secretary of State within 30 days after the adjournment of the Legislature.

B. The itemized statement shall show in detail all expenses paid, incurred or promised directly or indirectly in connection with legislation pending at the last previous session, with the names of the payees and the amount paid to each, including all disbursements paid, incurred or promised to legislative counsel or agents, and also specifying the nature of said legislation and the interest of the person, firm, association or corporation therein.

C. The itemized statement shall be verified by the oath of such person or in the case of a firm of a member thereof or in the case of a domestic corporation or association of an officer thereof or in the case of a foreign corporation or association of an officer or agent thereof.

§313. No contingent compensation

No person shall be employed as a legislative counsel or agent for compensation dependent upon a contingency.



§314. Legislative counsel and legislative agent, defined

The term "legislative counsel" as used in this chapter shall be construed to mean any person who for compensation appears at any public hearing before committees of the Legislature in regard to proposed legislation. The term "legislative agent" as used in this chapter shall be construed to mean any person, firm, association or corporation that for hire or reward does any act to promote or oppose proposed legislation except to appear at public hearings before committees of the Legislature, and shall include all persons who for compensation shall approach individual members of the Legislature or members-elect thereof with the intent in any manner, directly or indirectly, to influence their action upon proposed legislation.

§315. Application of terms

This chapter shall not apply to state, county, municipal or quasi-municipal officials, or their regularly elected or appointed subordinates, who act for no compensation other than their ordinary salary or compensation as such public officials or subordinates.

§316. Penalties

1. Whoever violates any provision of this chapter shall be punished by a fine of not less than \$100 nor more than \$500, and the Attorney General shall cause prosecutions to be instituted for the violation of any of the provisions of said chapter.

2. Any person, firm or corporation who shall falsely enter upon the docket the name or names of any person or firm as his or their legislative counsel or agent shall be punished by a fine of \$100 and shall be answerable in damages to the person or firm whose name or names has been so falsely entered.