

MAINE STATE LEGISLATURE

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Report of the Attorney General



on the gift by
Bates Manufacturing Company Inc.
to
The Supreme Judicial Court of Maine

Prepared at the request of
Governor Joseph E. Brennan
by
Attorney General Richard S. Cohen

NOVEMBER 25, 1980



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

RICHARD S. COHEN
ATTORNEY GENERAL

November 25, 1980

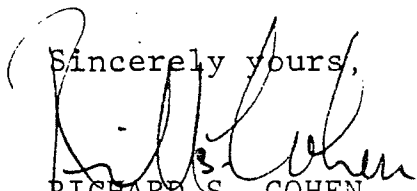
The Honorable Joseph E. Brennan
Governor of Maine
State House
Augusta, Maine 04333

Dear Governor Brennan:

Pursuant to your request of October 17, 1980 I have undertaken a review and analysis of the observation made by the State Auditor questioning the propriety of the gift received by the Chief Justice from Bates Manufacturing Company, Inc. to defray certain expenses of the Judicial Department. I hereby submit my report.

I am also sending a copy of my report to the Legislature through the President of the Senate and the Speaker of the House.

Sincerely yours,


RICHARD S. COHEN
Attorney General

RSC:ks

Enclosure

I. STATEMENT OF THE FACTS

From 1955 until 1966, Vincent L. McKusick served as Secretary to the Board of Directors and his law firm as counsel for Bates Fabrics, Inc. When Bates Fabrics, Inc. became a wholly owned subsidiary of Bates Manufacturing Co., Inc. in 1966, he and his law firm continued to serve the parent company in the same capacity. That relationship terminated at the end of 1976.

Beginning in the early 1970's Bates Manufacturing embarked upon a long-term plan designed to dispose of all of its business interests with the eventual goal of dissolving the company. As part of this plan, Bates Manufacturing began exploring the possibility of selling its subsidiary, Bates Fabrics, Inc., a New York corporation operating a textile plant in Lewiston, Maine. On December 31, 1976, Bates Fabrics was in fact sold to the employees of the company pursuant to an Employee Stock Ownership Trust which retained the company name of Bates Fabrics, Inc. Upon completion of that sale, Bates Manufacturing ceased to have any business interests or assets in the State of Maine.^{1/} Moreover, upon completion of the sale, Mr. McKusick ceased to have any relationship with either Bates Manufacturing or Bates Fabrics.

1/ By virtue of the sale of Bates Fabrics to the Employee Trust, Bates Manufacturing terminated its textile holdings, and its business interests consisted solely of coal operations in the States of Pennsylvania, Kentucky and Virginia.

On September 16, 1977, Vincent L. McKusick became the 24th Chief Justice of the Supreme Judicial Court of Maine. Shortly after taking office, the Chief Justice appointed the Committee on the 1978 Judicial Conference, consisting of Justice David Nichols, Justice Louis Scolnik and Judge John Benoit. From the moment of its inception the central theme of the 1978 Judicial Conference was the concept of forming and cementing a strong sense of "judicial partnership" or "court family" within and between all levels of Maine's judiciary.^{2/}

As part of the process of building this concept of a "court family," the Chief Justice expressed the view that the spouses of the justices and judges throughout all levels of the court

^{2/} The Chief Justice's strong emphasis on creating a "court family" atmosphere within the judiciary may have been a response to his realization that, at the time he took office, the Judicial Department was deeply divided over the issue of court administration. It may be recalled that on June 3, 1975 the Legislature enacted Chapter 408 of the Public Laws of 1975. The principal feature of Chapter 408 was the establishment of a State Court Administrator's Office which, operating under the supervision of the Chief Justice, was responsible for the administration of the Supreme, Superior and District Courts. There was considerable opposition within the judiciary to the court administration system created by Chapter 408. In mid-1977, shortly before Chief Justice McKusick took office, this opposition reached its peak when the Legislature began considering a bill (L.D. 838, H.P. 635) which would have created a separate administrative system for the District Court. Both the legislative debate surrounding L.D. 838 and other sources of which we are aware reveal quite clearly that Maine's judiciary was deeply divided concerning the issue of court administration. At the time he took office, Chief Justice McKusick was, no doubt, aware of the fact that this issue had generated some degree of turmoil within the Judicial Department.

system should attend the First Judicial Conference.^{3/} In fact, the Judicial Conference Committee actively sought to prepare a program which would be of direct benefit to the spouses. To encourage the attendance of spouses, the Chief Justice also expressed his desire that their expenses for meals and lodging at the Judicial Conference be reimbursable. However, the Chief Justice was advised by the then State Court Administrator, Elizabeth Belshaw, that the prevailing rule within State Government did not permit the expenses of spouses to be reimbursed from State funds and the Chief Justice indicated his wish to comply with that State policy.

At this point in time, the Chief Justice began exploring the possibility of obtaining private funding to cover the costs of the spouses' expenses. In a letter to all Maine justices and judges dated December 30, 1977, the Chief Justice emphasized the importance he attached to having spouses attend the Judicial Conference. He stated:

"We also hope very much that spouses of Maine Judges will accompany them to this conference. Their participation will strengthen the ties that bind Maine's judicial 'family'. We are definitely planning the program with them in mind."

^{3/} The Legislature created the Judicial Conference of Maine, "composed of judges and justices who shall advise and consult with the Supreme Judicial Court and the Chief Justice on matters affecting the administration of the Judicial Department," by P.L. 1975, c. 408, § 19-A, enacting 4 M.R.S.A. § 471. In 1977, the Legislature mandated that the Judicial Conference "shall meet at least once each year. . . ." 4 M.R.S.A. § 471, as amended by P.L. 1977, c. 544, § 11.

With respect to the reimbursement of the spouses' expenses, the Chief Justice advised his colleagues that:

"I am working to find outside funding to permit the Conference to pick-up all or part of the cost incurred by judges' spouses in attending Conference functions. The active participation of spouses in this activity of the courts to my mind contributes directly to the morale of our court family and, therefore, to the efficiency of our court operations. Wish me luck in my endeavors on this score!"

Initially, the Chief Justice considered the possibility of obtaining a grant from a charitable foundation and to this end he contacted a trust officer in the Portland area who was familiar with charitable foundations. However, the Chief Justice was informed that, due to the timing of his inquiry, most of the charitable foundations which might consider making such a grant to the Judicial Conference had already committed their available funds.

The Chief Justice's attention then focused on the possibility of obtaining a contribution from some other private source. From the Chief Justice's standpoint, Bates Manufacturing became a logical choice from which to seek such a contribution since, in his view, (1) he had had a long-standing personal and professional relationship with that company and, therefore, it might be favorably inclined to make a contribution, and (2) the company had no business or legal interests in the State of Maine and, therefore, it was unlikely that the company would return to this State as a litigant in the courts of Maine.

In mid-January, 1978, the Chief Justice telephoned Attorney David Finkelstein in New York, who was Vice-President of and general counsel to Bates Manufacturing. The Chief Justice informed Mr. Finkelstein of the upcoming Judicial Conference which, by this time, had already been scheduled for February 2-4, 1978, at the Downtown Holiday Inn in Portland. The Chief Justice also apprised Mr. Finkelstein of his desire that spouses be able to attend that Conference and that State funds could not be used to defray this expense. The Chief Justice inquired of Mr. Finkelstein whether Bates Manufacturing would be willing to make a \$2,000 contribution to the State of Maine for the purpose of paying the meal and lodging expenses of those spouses attending the Judicial Conference. Mr. Finkelstein indicated that he would present the Chief Justice's request to the Executive Committee and the Board of Directors of Bates Manufacturing, and would recommend to both bodies that the contribution be made.^{4/}

Following his conversation with Mr. Finkelstein, the Chief Justice conferred with the other members of the Supreme Judicial

^{4/} Our investigation of this matter revealed that the Chief Justice contacted no other source for the purpose of seeking a contribution to the Judicial Conference.

Court concerning this matter.^{5/} The Chief Justice advised the other Justices of his approach to Bates Manufacturing and that there was good reason to believe that the company would make a contribution to the Judicial Conference. The Justices were informed by the Chief Justice of the status of Bates Manufacturing, of the sale of its Maine assets in December, 1976, and of the Chief Justice's understanding that there was virtually no likelihood that the company would ever return to the State of Maine as a potential litigant. Based upon our interviews with all of the Justices involved, it appears that there was a wide-ranging discussion of the propriety of accepting any contribution which Bates Manufacturing might make. In particular, the discussion focused on whether its acceptance would present an actual conflict of interest involving Bates Manufacturing. Moreover, several of the Justices expressed the view that acceptance might be "unwise," even if permissible. While no formal vote was taken, the Justices ultimately arrived at a consensus that acceptance of the contribution would not result in a conflict of interest and was not barred by any legal or ethical provision.

5/ The Chief Justice's discussion with the other members of the Court concerning the possibility of a contribution from Bates Manufacturing apparently took place at a luncheon meeting at which the Justices customarily discussed matters affecting the administration of the Court. Present at the luncheon meeting were the Chief Justice and Associate Justices Sidney Wernick, Charles Pomeroy, James Archibald, Edward Godfrey and David Nichols. Former Associate Justice (now Active Retired Justice) Thomas Delahanty did not participate in the discussion since he was in ill health at the time.

Sometime in late January, 1978, the Chief Justice was informed by Mr. Finkelstein that on January 23, 1978, the Board of Directors of Bates Manufacturing had voted to make a contribution to the State of Maine.^{6/} Shortly thereafter, the Chief Justice conferred with former State Court Administrator Elizabeth Belshaw. Ms. Belshaw advised the Chief Justice that it would be necessary to submit a financial order to Governor James B. Longley in order to accept the contribution and have it allocated to the Judicial Department's account. The Chief Justice instructed Ms. Belshaw to have such a financial order prepared and, in fact, one was prepared and presented to Governor Longley.

6/ The minutes of the Board of Directors' meeting at which the contribution to the State of Maine was discussed and approved, read in their entirety as follows:

"CONTRIBUTION TO THE STATE OF MAINE

At Chairman Schneider's request, Mr. Finkelstein reported that he had been requested by Vincent L. McKusick, Esq., who had served for many years as Secretary of the Corporation and who was now Chief Justice of the Supreme Judicial Court of Maine, for the Corporation to give consideration to making a contribution to the State of Maine in order to fund a State of Maine judicial convention. Mr. Finkelstein suggested that it would be appropriate in the light of the valuable services heretofore performed by Mr. McKusick to consider a contribution in the amount of \$2,000.

On motion duly made, seconded and carried, it was unanimously

RESOLVED: That the Corporation hereby authorizes the making of a cash contribution in the amount of \$2,000 to the State of Maine in recognition of the valuable services heretofore performed by Vincent L. McKusick, Esq., formerly Secretary of the Corporation."

Financial Order 457F8 would have authorized the Judicial Department "to accept a gift of \$2,000 from Bates Manufacturing Company" and would have ordered the State Controller to "increase the allotment \$2,000 in account #4040.2 Judicial Department Projects." The Financial Order was prepared by former State Budget Officer Otto W. Siebert, and it appears that it was presented to Governor Longley on February 1, 1978.^{7/} Apparently, Governor Longley requested additional information concerning this Financial Order, for at noon on February 1, 1978, the Chief Justice had a telephone conversation with Governor Longley's legal advisor, Mr. Joseph Hochadel, about the contribution from Bates Manufacturing. The Chief Justice provided the additional information in a letter to the Governor dated February 1, 1978, in which he advised the Governor of the contribution from Bates Manufacturing, the circumstances surrounding it, and the purposes for which it was to be used.

^{7/} Unfortunately, the Financial Order is undated. However, we have been informed by the State Budget Office that it was the standard procedure to number financial orders immediately before presentation to the Governor. The financial orders numbered immediately after 457F8 were presented to and approved by Governor Longley on February 1, 1978. Consequently, assuming that the State Budget Office followed its customary procedure with respect to Financial Order 457F8, it would appear that it was submitted to the Governor no later than February 1, 1978.

Moreover, the Chief Justice informed Governor Longley that "Bates Manufacturing Company, Incorporated, no longer has any business interest in Maine, having sold the Bates plant in Lewiston to an employee stock ownership trust a year or so ago. Thus, from the point of view of our Maine courts, this gift cannot, as I see it, cause any embarrassment in the future in litigated cases involving Bates." The Chief Justice's letter probably arrived at the Governor's Office on February 2 or 3, 1978.

Meanwhile, the First Annual Judicial Conference was scheduled to take place from February 2-4, 1978, at the Downtown Holiday Inn in Portland. By this time, all of the judges had been informed that the expenses of their spouses would be paid by the Judicial Conference. In fact, on the printed Conference program, the contribution from Bates Manufacturing was expressly acknowledged as follows:

"A grant received from the Bates Manufacturing Company in support of this Conference Program is deeply appreciated."

Furthermore, in his opening remarks to the Judicial Conference, the Chief Justice "announced receipt of a grant from Bates Manufacturing Company, Inc. to cover Conference expenses of spouses." (See Minutes of the First Maine Judicial Conference).

Following the Judicial Conference, the Chief Justice wrote a letter, dated February 6, 1978, to Mr. Finkelstein thanking Bates Manufacturing for its \$2,000 gift. In that letter the Chief Justice remarked that "[t]he wives were able to attend with the help of your grant, and I know that that was a great help

in building the family spirit that will be conducive to the judiciary's working together closely and effectively." In a separate letter, also dated February 6, 1978, to Philip S. Sassower, Esquire, and Lawrence I. Schneider, President and Chairman of the Board respectively of Bates Manufacturing, the Chief Justice once again extended his thanks for the \$2,000 contribution. In that letter the Chief Justice remarked that

"I am finding that the strictures of public finance, which, for example, at least here in Maine prevent the reimbursement of expenses of Judges' spouses at a conference of this sort, stand in the way of accomplishing what I think is very important, namely, the building of a family spirit within the judiciary. Your grant made it possible for us to do those things which would normally be done outside of government to make this conference a success, and it was that in every way."

At the time these two letters were written, the contribution from Bates Manufacturing had not actually been received. However, sometime between February 9, 1978 and February 14, 1978, the Chief Justice received a check from Bates Manufacturing in the amount of \$2,000 payable to the "State of Maine" and signed by Mr. Sassower as President of the Company. The check was dated February 9, 1978, and on February 14, 1978, the Chief Justice wrote to Mr. Finkelstein acknowledging receipt of the contribution and once again expressing his gratitude for it.

Up until this time it appears that Governor Longley had taken no action with respect to Financial Order 457F8. However,

sometime prior to March 16, 1978, the Chief Justice, the State Court Administrator and the Judicial Department's Fiscal Director, Mr. Donald Jones, learned that Governor Longley was not going to sign the financial order.^{8/} Both the Chief Justice and the former State Court Administrator have indicated to us that they understood that the Governor declined to sign the financial order because he did not wish to create an exception to the general rule in State Government that the expenses of spouses were not reimbursable.^{9/}

8/ None of the individuals whom we have interviewed specifically recall how this information was communicated but all are in agreement that it was, in fact, communicated to the Judicial Department.

9/ Based upon our investigation of this matter, it is unclear what action Governor Longley actually took with respect to this financial order. In particular, we are not certain whether Governor Longley affirmatively denied the order or whether he simply declined to take any formal action on it. The reason for our uncertainty in this regard stems from the rather confusing manner in which Financial Order 457F8 was handled.

We have been advised by the State Budget Office that Governor Longley followed a customary procedure when considering financial orders. Normally, when Governor Longley approved a financial order, he would initial it and the State Budget Office would mark the order "Approved By Governor" and would stamp the order with the date on which the Governor took the action. In those instances where the Governor did not approve the financial order, he would not initial it but the State Budget Office would mark the order "Not Approved By Governor" and would stamp the order with the date on which the Governor denied his approval. Within a day or two of action by the Governor, the original of the financial order would be transmitted to the Secretary of State for filing and a copy of the order would be transmitted to the State agency which had submitted it.

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Upon learning that Governor Longley was not willing to sign the financial order,^{10/} the Chief Justice conferred with

9/ Cont.

As observed previously, it appears that Financial Order 457F8 was submitted to the Governor on February 1, 1978, and that the Chief Justice's letter reached Governor Longley on February 2 or 3, 1978. Although the Judicial Department had apparently learned by the middle of March, 1978 that the Governor would not approve the Financial Order, the next document which refers to it is a memo dated January 2, 1979, the day before Governor Longley left office, from the State Budget Office to the Judicial Department. That memo stated as follows:

"The attached Financial Order(s) was not approved by Governor Longley. If you wish to present this order to Governor Brennan, retype and resubmit to this office."

In a memo dated January 3, 1979, former State Budget Officer Otto W. Siebert wrote to former Secretary of State Markham L. Gartley that "[f]inal action was taken by the Governor on the following Financial Orders. The originals of the orders are attached." Listed among 24 orders is Financial Order 00457F8. The original of Financial Order 457F8 is marked "Not Approved By Governor" but is undated. The order was received in the Office of the Secretary of State on January 4, 1979, and we have been informed that a copy of the order was received by the Judicial Department on January 3 or 4, 1979.

In view of the fact that Financial Order 457F8 was not processed for almost eleven months, we are not certain what action Governor Longley took with respect to it. As part of our investigation of this matter we have interviewed those members of Governor Longley's staff who may have had some involvement with the financial order. While some of the Governor's aides speculated that the Governor may have declined to take final action on the financial order on the ground that the decision was ultimately for the Judicial Department to make, none has a specific recollection of any conversation or event which confirms or refutes this speculation.

10/ Our investigation of this matter indicates that the only members of the Judicial Department who were aware that Governor Longley had declined to sign the financial order were the Chief Justice, the State Court Administrator and the Fiscal Director.

the State Court Administrator as to how the contribution from Bates Manufacturing should be handled. Apparently, Ms. Belshaw suggested that the Chief Justice return the check to the donor. The Chief Justice concluded however that since the contribution from Bates Manufacturing did not involve the use of State funds, it did not constitute a departure from the State policy regarding the reimbursement of spouses' expenses. Consequently, the Chief Justice decided that the contribution would be kept and would be used to defray the expenses of those spouses who had attended the Judicial Conference. Donald Jones, the Court's Fiscal Director, was instructed to determine the best method of handling the funds. It was agreed by everyone, including the Chief Justice, that a full and accurate record of how the funds were disbursed should be maintained for auditing purposes.

Prior to March 16, 1978, Mr. Jones telephoned the Deputy State Treasurer and the former State Controller and explained the situation to them, including the fact that the Governor had declined to approve the financial order. Mr. Jones asked both of these officials whether they knew of any alternative method of handling these funds. Mr. Jones also indicated that he had

considered the establishment of a checking account in the name of the "State of Maine Judicial Department" as one possible alternative. Both officials indicated to Mr. Jones that, in the absence of a financial order authorizing acceptance and disbursement of the funds, they were not aware of any alternative mechanism for handling such funds. Moreover, both officials advised Mr. Jones that the opening of a separate checking account was contrary to State procedure and that the funds should be deposited in the State Treasury.^{11/}

11/ Following his conversation with Mr. Jones, the Deputy State Treasurer advised the then State Treasurer of the information recited above. Although it had already been decided that the opening of a checking account in the name of the "State of Maine Judicial Department" was contrary to State procedure, the Treasurer apparently questioned the propriety of the transaction and contacted a former Deputy Attorney General. As remembered by the Treasurer, when he informed the Deputy Attorney General about the inquiry concerning the checking account, he also told him that the money was from a private corporation and was to be used to defray certain travelling expenses.

The Deputy Attorney General's recollection of this conversation is somewhat different. In particular, he recalls that the Treasurer informed him that a Portland banker had telephoned the Treasurer's Office and indicated that the Chief Justice had received a check from an unidentified former corporate client which he desired to deposit in a checking account in the name of the State of Maine.

Based upon his understanding of the facts, the Deputy Attorney General assumed that the check represented deferred compensation for legal services which the Chief Justice had rendered when he was in private practice. For that reason, and because he had been informed that the Treasurer's Office had already told the Judicial Department that it could not open a checking account in the name of the State, the Deputy Attorney General subsequently indicated to the Treasurer that he saw no need for any further action.

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Following his telephone conversations with the officials in Augusta, Mr. Jones reported back to the Chief Justice and the State Court Administrator. It was determined at that time that the contribution from Bates Manufacturing would be deposited into a checking account in the name of the "State of Maine Judicial Department" and that payment of the expenses of the spouses who had attended the Judicial Conference would be made from that account. It was also decided by the Chief Justice, the State Court Administrator and the Fiscal Director that the existence of this checking account would be brought to the attention of the State Auditor.

In a letter dated March 16, 1978, to the Canal National Bank of Portland, the Chief Justice authorized the State Court Administrator and the Fiscal Director "to receive and dispense funds of this Department and, specifically, to authorize disbursement of funds from an account to be established at the Canal National Bank in the name of this Department." Presumably at the same time, the Chief Justice endorsed the reverse side

11/ Cont.

While there is obviously not complete agreement as to the exact substance of the two conversations between the former Treasurer and the former Deputy Attorney General, two facts do emerge with clarity. First, the Deputy Attorney General did not discuss the matter with any other member of his Department at the time the events were occurring. Second, the Judicial Department was unaware of these conversations. Thus, in the final analysis, we do not believe that the communications described herein are relevant to our review and evaluation of the transactions in question.

of the \$2,000 check from Bates Manufacturing "For Deposit to State of Maine Judicial Department." The Fiscal Director did, in fact, open up a checking account at the Canal National Bank on March 16, 1978, by depositing the \$2,000 check from Bates Manufacturing.

By this time several of the justices and judges whose spouses had attended the Judicial Conference had submitted vouchers seeking reimbursement for meal and lodging expenses. In some instances, the judges had charged their spouses' meal and lodging expenses to their rooms and, therefore, the Downtown Holiday Inn was submitting bills for those charges. In those instances where the justice or judge had paid for his spouse's expenses, a reimbursement check, drawn on the checking account at the Canal National Bank, was made payable directly to the justice or judge. A total of \$313.08 was expended in this fashion. In those cases where a justice or judge charged his spouse's expenses to his room, a check was made payable directly to the Downtown Holiday Inn. A total of \$273.60 was expended in this fashion. Additionally, a check in the amount of \$816.42 was made payable directly to the Downtown Holiday Inn and represented the spouses' portion of banquet meals which the hotel had provided to all attendees at the Conference. In reimbursing the expenses of the spouses, the Fiscal Director followed the State guidelines governing the type and the amount of expenses which were reimbursable. The total expenditure for the expenses of spouses who attended the

First Judicial Conference was \$1,403.10.^{12/} After making these disbursements, a balance of \$596.90 remained in the checking account.^{13/}

In April, 1979, plans for the Second Annual Judicial Conference were being finalized. The Conference was scheduled from May 10-12, 1979 at the Samoset Resort Inn at Rockport. In a letter dated April 18, 1979, to "[a]ll Maine Judges and Spouses," the Chief Justice indicated that:

"The Conference will be able to absorb the cost of the following meals for spouses: lunch Thursday, lunch Friday, dinner Thursday and lunch Saturday. The Conference will be unable to absorb any lodging costs for spouses."

The Second Annual Judicial Conference of Maine took place as scheduled from May 10-12, 1979 at the Samoset Resort Inn at Rockport. The meal and lodging expenses of the justices and

^{12/} An itemized statement of these disbursements appears in the Appendix to this report. It should be observed that with respect to the expenses of spouses attending the First Judicial Conference in Portland, twenty-two checks were drawn upon the Canal National Bank checking account, all being signed by Donald Jones as Fiscal Director of the Judicial Department.

^{13/} On September 15, 1978, a portion of this balance was transferred to an interest bearing savings account at the Maine Savings Bank. The savings account remained open until May 4, 1979 and earned a total of \$19.80 in interest, at which time the funds in the savings account were transferred back to the checking account.

judges were reimbursed in the normal fashion by the State Controller. On May 16, 1979, the Samoset Resort Inn submitted a bill to the Judicial Department's Fiscal Director for lunches on May 9, 10, 11 and 12, 1979, and for dinner on May 10, 1979, as well as for several coffee breaks during the course of the Conference. With the exception of these Conference meals and coffee breaks, no other expenses of the spouses were reimbursed. The total bill submitted by the Samoset was \$2,558.81. Of that amount \$609.72 was paid directly to the hotel by means of a check drawn upon the Canal National Bank checking account.^{14/} The balance of the bill, \$1,949.09, was paid in the customary fashion by the State Controller. The contribution from Bates Manufacturing had now been totally expended.

During the summer of 1978, a representative from the State Auditor's Office was conducting a routine audit of the Judicial Department for the fiscal years 1977 and 1978. The bank records pertaining to the \$2,000 contribution from Bates Manufacturing had been kept by the Judicial Department's Fiscal Director in his

^{14/} With the exception of one dollar which was left in the checking account to cover any service charge, the \$609.72 represented the unexpended balance of the Bates' contribution plus interest. No attempt was made to ascertain the percentage of the Conference meals attributable to spouses.

desk drawer and, at that time, he had forgotten about its existence. Shortly after the auditor's visit, the Fiscal Director remembered the checking account and promptly telephoned the auditor and advised him of its existence. The auditor informed the Fiscal Director that his audit report was nearly completed and that he would include the checking account in his next audit report of the Judicial Department.

During the summer of 1980, the representative of the State Auditor's Office returned to the Judicial Department to conduct another routine audit of that Department. At that time the auditor recalled the telephone conversation with the Judicial Department's Fiscal Director in 1978 concerning the existence of a separate checking account. The auditor examined both the checking and savings accounts and his "observation" concerning the \$2,000 contribution from Bates Manufacturing was made part of the Judicial Department's Audit Report. On October 17, 1980, you referred this matter to us for our review and analysis.

II. MAINE STATUTORY LAW

Our legal analysis of this matter begins with an examination of those provisions of Maine statutory law which we believe merit some attention. Based upon our review of the facts, we have identified two areas of inquiry. First, we have analyzed the language of 17-A M.R.S.A. § 605 to determine whether the Chief Justice's conduct may have violated that criminal statute. Second, we have considered the Chief Justice's acceptance of the \$2,000 contribution from Bates Manufacturing in the name of the State and the opening of the checking and savings accounts to determine whether that conduct was consistent with regular State procedures.

A. Criminal Statutes

17-A M.R.S.A. § 605 provides that a person is guilty of an improper gift to a public servant, a Class E crime, if

"Being a public servant he solicits, accepts or agrees to accept any pecuniary benefit from a person who he knows is or is likely to become subject to or interested in any matter or action pending before or contemplated by himself or the governmental body with which he is affiliated."

Based upon all of the available evidence we have acquired during the course of our investigation of this matter, it is clear that the Chief Justice's solicitation and acceptance of the \$2,000 contribution from Bates Manufacturing did not result in a violation of this criminal statute. The plain language of 17-A M.R.S.A. § 605 states that an essential element of that offense is that the public servant who solicits, accepts or agrees to accept a pecuniary benefit from a

person have knowledge that the donor ". . . is or is likely to become subject to or interested in any matter or action pending before or contemplated by himself or the governmental body with which he is affiliated."

Our examination of the factual circumstances surrounding the Chief Justice's solicitation and acceptance of the contribution from Bates Manufacturing reveals a total absence of knowledge on the part of the Chief Justice himself or any other member of the Supreme Judicial Court that Bates Manufacturing was or was likely "to become subject to or interested in any matter or action" before the courts of Maine. In fact, the evidence affirmatively demonstrates that the Chief Justice and the other members of the Court were firmly convinced that there was no likelihood that Bates Manufacturing would return to the State of Maine as a potential litigant. The status of Bates Manufacturing as a potential litigant and the possibility that acceptance of a contribution from that company could present an actual conflict of interest were focal points of the discussion between the Chief Justice and his colleagues on the Court and there was unanimity in the view that it was unlikely that Bates Manufacturing would ever be a litigant or an interested party in any matter before the courts of Maine. We would also point out that in his letter to Governor Longley of February 1, 1978, the Chief Justice reiterated his belief that Bates Manufacturing would not be involved in any cases before Maine's Judicial Department.

Thus, the evidence in this matter, far from showing that the Chief Justice knew that Bates Manufacturing was or was likely "to become subject to or interested in any matter or action pending before or contemplated by himself or the governmental body with which he is affiliated," conclusively demonstrates that the Chief Justice firmly believed that just the opposite was true.^{15/}

It is our conclusion, therefore, that the Chief Justice's solicitation and acceptance of the \$2,000 contribution from Bates Manufacturing did not result in a violation of 17-A M.R.S.A. § 605.^{16/}

B. Statutes Regulating Governmental Operations

We have also examined state law to determine whether the Chief Justice's acceptance of the contribution from Bates Manufacturing on behalf of the State of Maine or his decision to open bank accounts in the name of the Judicial Department complied with

^{15/} We would also point out that we have some doubts as to whether the contribution from Bates Manufacturing constituted a "pecuniary benefit" within the meaning of 17-A M.R.S.A. § 605. The phrase "pecuniary benefit" is defined as "any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain" 17-A M.R.S.A. § 602(2)(C). As will be discussed in greater detail in this report, we believe the Chief Justice would have been authorized to direct the State Controller to pay the expenses of spouses who attended the Judicial Conference from State funds. In view of this fact, it is arguable that the entity which obtained an economic gain from the Bates Manufacturing contribution was the State of Maine. In any event, since we have concluded that no violation of section 605 occurred because of the absence of any evidence of knowledge on the part of the Chief Justice, we need not resolve this question.

^{16/} We have also examined the other provisions of the Maine Criminal Code (Title 17-A M.R.S.A.) and have found none which are applicable to the facts of this case.

regular state procedures.

Our examination of state law reveals that the Legislature has established a procedure for the acceptance and expenditure of gifts on behalf of the state. 2 M.R.S.A. §5 (1979) authorizes the Governor "to accept in the name of the State any and all gifts, bequests, grants or conveyances to the State of Maine."^{17/} The procedure regulating the manner in which money collected or otherwise received for the benefit of the State is to be handled is found in 5 M.R.S.A. §131 (1979), which provides in part that:

"Every department and agency of the State, whether located at the Capitol or not, collecting or receiving public money, or money from any source whatsoever, belonging to or for the use of the State, or for the use of any state department or agency, shall pay the same immediately into the State Treasury, without any deductions on account of salaries, fees, costs, charges, expenses, refunds, claims or demands of any description whatsoever" [Emphasis added] ^{18/}

^{17/} The Legislative Council also has been given statutory authority to accept such gifts. 3 M.R.S.A. §162 (16) (1979).

^{18/} In our view this procedure for depositing funds, made applicable to "[e]very department and agency of the State," applies to the Judicial Department. In reaching this conclusion we bear in mind the recent admonition by the Supreme Judicial Court in Board of Overseers of the Bar v. Lee, Me., A.2d, slip op. at 6, n. 6 (decided November 17, 1980) that:

"Where our constitution refers to the three great departments of government, the reader must be careful to distinguish them from the 'departments' or agencies which may from time to time be created within the executive department."

Our research into the legislative background to 5 M.R.S.A. §131 reveals that this section derived from statutes reorganizing the Executive Department, but that fact alone

(cont. next page)

Once a gift has been deposited into the State Treasury, the funds may not be expended except in accordance with the regular procedure applicable to public funds. Maine Constitution, Art. V, pt. Fourth, sec. 4 ("No money shall be drawn from the treasury, except in consequence of appropriations or allocations authorized by law."); 5 M.R.S.A. §1667 (providing for work programs, allotment, and revisions thereof). In the case of gifts to the State accepted by the Governor, both the acceptance and the authorization for expenditure are accomplished through a financial order.

It is clear from our discussion of the facts, more fully set forth in Section I of this report, that these statutory procedures were not followed with respect to the contribution from Bates Manufacturing. Upon being advised by the State Court Administrator that a financial order would be necessary for the acceptance of the gift and an allocation of the funds to the Judicial Department, a financial order was submitted to Governor Longley, apparently on February 1, 1978. On the same date, in response to a telephone

18/ Cont.

does not lead us to conclude that the phrase "department . . . of the State" was intended to refer only to Executive Departments, to the exclusion of the Judicial Department. To the contrary, when §131 is viewed in the larger context of several other sections in Title 5 concerning fiscal administration where the phrase "department or agency" is used in a manner that obviously includes the Judiciary it becomes quite clear to us that the Legislature intended §131 to apply to the Judicial Department. For example, the very provision of Title 5 which gave rise to this report -- §244 directing the State Auditor to audit the books and records of the Department of Finance and Administration and the "other departments and agencies of the State Government," -- uses the same phrase. See also, 5 M.R.S.A. §1582 (handling appropriations), §1583 (exceeding appropriations prohibited), §1586 (transfer of funds generally), and §1667 (work program and allotments).

conversation with the Governor's legal advisor, the Chief Justice wrote a letter to the Governor furnishing additional information about the gift. However, upon learning that Governor Longley was not willing to sign the financial order accepting the gift and subsequently upon learning that there was no alternative procedure for expending the money through regular State procedures without a financial order, the Chief Justice determined that the contribution from Bates Manufacturing would be deposited in a commercial checking account in the name of "State of Maine Judicial Department."

Because the regular procedure with regard to gifts to the State was not followed for the Bates Manufacturing contribution, we have examined the question of whether the Judicial Department possessed the legal authority to accept and expend the proceeds of a gift without conforming to that procedure.

Our research into this question indicates that the authority over gifts made to the State is a fundamental attribute of sovereignty which is vested in the legislative branch of government and which the Legislature may properly delegate to other governmental bodies.^{19/} See, e.g., Silvette v. Art Commission of Commonwealth of Virginia, 413 F. Supp. 1342, 1346 (E.D. Va. 1976); Opinion of the Justices, N.H., 251 A.2d 330, 331 (1969); In Re Edge's Estate, 339 Pa. 67, 12 A.2d 293, 293 (1940); Vestal v. Pickering, 125 Or. 553, 267 P. 821, 822 (1928); Adkins v. Kalter, 177 Ark. 1111,

^{19/} Historically, gifts to the State of Maine have been accepted by the Legislature, the Governor or by the joint action of both those branches of government. See, e.g., Fitzgerald v. Baxter State Park Authority, Me., 385 A.2d 189 (1978).

287 S.W. 388, 389 (1926): Dickson v. United States, 125 Mass. 311, 315 (1878). . See generally 81A C.J.S. §145 at 590-91. Although we have found no Maine decision on point, the conclusion that the power over gifts resides in the Legislature alone, unless otherwise delegated, appears to us to be the natural and inevitable product of the general principle, long established in Maine jurisprudence, that the Legislature is a body of residual constitutional powers whereas the Executive and Judicial Branches exercise enumerated powers. As explained in Sawyer v. Gilmore, 109 Me. 169, 180, 83 A. 673, 678 (1912):

"It is but the restatement of a fundamental and familiar principle to say that the sovereign power is lodged in the people and that the Constitution, framed and adopted by the people, divides the powers of government into three distinct and yet coordinate departments, executive, judicial and legislative. But it is not always borne in mind that the Constitution operates differently with respect to these different branches. The authority of the executive and judicial departments is a grant. These departments can exercise only the powers enumerated in and conferred upon them by the Constitution and such as are necessarily implied therefrom. The powers of the Legislature in matters of legislation, broadly speaking are absolute, except as restricted and limited by the Constitution. As to the executive, and judiciary, the Constitution measures the extent of their authority, as to the Legislature it measures the limitations upon its authority."

In accordance with this fundamental principle, it seems to us quite obvious that, in the absence of a specific constitutional allocation of authority, the basic power over the regulation of gifts made to the State resides in the Legislature. That power includes the exercise of a policy determination of whether to accept the gift in the first place and, at least in the case of

pecuniary gifts, the responsibility for determining how the funds should be expended and for establishing a regular procedure for their actual expenditure. As we have previously explained, for practical reasons the Legislature has delegated this power to the Executive Branch. To conclude that the Judiciary, as a coordinate branch of government, also possesses such powers over gifts would require the existence of an enumerated or an implied grant of authority. We have been unable to discover any provision of law which specifically authorizes the Judicial Department to accept gifts in the name of the State of Maine. Nor, for the reasons we now explain, do we believe that the Judicial Department possesses an implied power to accept such gifts.

We recognize, of course, that the Judicial Department is a distinct and co-equal branch of government and, as such, is vested with implied or inherent powers to deal with financial matters affecting it. See Me. Const. Art. III, §§1, and 2. In fact, the Law Court has recently had occasion to discuss such powers in Board of Overseers of the Bar v. Lee, supra, slip op. at 6-7, (Supreme Judicial Court, opinion issued November 17, 1980), where the Court stated:

"[O]ur form of government, at the State as well as the federal level, embraces the doctrine of separation of powers. . . .

From this concept of separation of powers there is derived the inherent power of the Supreme Judicial Court. It is a fundamental principle of constitutional law that each department in our tri-partite scheme has, without any express grant, the inherent right to accomplish all objects necessarily within the orbit of that department when not expressly allocated to, or limited by the existence of a similar power in, one of the other departments. The inherent power

of the Supreme Judicial Court, therefore, arises from the very fact that it is a court and connotes that which is essential to its existence and functioning as a court."

Some inherent powers of the court are in the nature of "incidental powers" which are implied from the very attributes of the judicial process and which are exercised in the ordinary course of the business of the court. See, e.g., District Court for District IX v. Williams, Me., 268 A.2d 812 (1970) (removal of employee of the judicial department); Application of Feingold, Me., 296 A.2d 492 (1972) (admission and discipline of attorneys); Board of Overseers of the Bar v. Lee, supra (imposition of a registration fee on attorneys licensed to practice law). We can see no basis for concluding that this type of incidental power of the judiciary includes the power to treat gifts made to the Judiciary outside the normal procedure for State government. In our view, the power to accept and arrange for the expenditure of pecuniary gifts is simply not an attribute of the judicial process, and certainly cannot be said to be "essential to [the] existence and functioning [of the] court." Board of Overseers of the Bar v. Lee, supra.

The courts also possess inherent powers of a different nature -- powers of an emergency nature, borne of the necessity for the preservation and effective functioning of the court, which justify a departure from procedures established in other branches of government. In this connection it has long been recognized that the inherent authority of the judiciary includes the power to direct other co-equal branches of government to provide the judiciary with the financial means to perform essential functions of

the judiciary. Board of Overseers of the Bar v. Lee, supra, slip op. at 9, n. 11. The case perhaps most frequently referred to for this proposition is O'Coin's Inc. v. Treasurer of County of Worcester, 362 Mass. 507, 287 N.E.2d 608 (1972) where the Massachusetts Supreme Judicial Court approved the issuance of a writ of mandamus directing the treasurer and commissioners of Worcester County to pay for a tape recorder and three tapes purchased by a judge of the Superior Court for use during criminal cases in the county. The court pointed out that:

"It is axiomatic that, as an independent department of government, the judiciary must have adequate and sufficient resources to ensure the proper operation of the courts. It would be illogical to interpret the constitution as creating a judicial department with awesome powers over the life, liberty, and property of every citizen while, at the same time, denying to the judges authority to determine the basic needs of their court as to equipment, facilities and supporting personnel. Such authority must be vested in the judiciary if the courts are to provide justice, and the people are to be secure in their rights under the constitution."

O'Coin's, supra, 362 Mass. at 510, 287 N.E.2d at 611-12. See also Commonwealth ex. rel. Carroll v. Tate, 442 Pa. 45, 274 A.2d 193, cert. denied, 402 U.S. 974 (1974) (court ordered increase in the judicial budget in areas ranging from adult probation to courtroom personnel and law clerks); Clerk of Court's Compensation v. Lyon County Commissioners, Minn., 241 N.W.2d 787 (1976) (court ordered determination of clerk's salary held inconsistent with specific constitutional provisions); Matter of Salary of Juvenile Director, Wash., 552 P.2d 163 (1976) (court ordered increase of salary of Director of Juvenile Services held unjustified); Judges for Third

Judicial Circuit v. County of Wayne, 386 Mich. 1, 190 N.W.2d 288 (1971) (court ordered compensation for law clerks, judicial assistant and probation officer). See generally, Annotation, Inherent Power of Court to Compel Appropriation or Expenditure of Funds for Judicial Purposes, 59 A.L.R.3d 359 (1974); Brennan, Judicial Fiscal Independence, 23 U.Fla.L.Rev. 277 (1970-1971); Note, Judicial Financial Autonomy and Inherent Power, 57 Corn. L.Rev. 975 (1971-1972); Note, The Inherent Power of the Courts to Appropriate Money for "Reasonably Necessary" Expenditures, 55 Marq. L.Rev. 392 (1972).

These decisions and commentators, while recognizing the inherent authority of the judiciary with respect to its fiscal affairs, at the same time are careful to point out the limitations on this power. Thus, in O'Coin's Inc., supra, the court stated:

"It has been wisely observed: 'The very conception of inherent power carries with it the implication that its use is for occasions not provided for by established methods. . . . [Only [w]hen . . . [established] methods fail and the court shall determine that by observing them the assistance necessary for the due and effective exercise of its own functions cannot be had, or when an emergency arises which the established methods cannot or do not instantly meet, then and not until then does occasion arise for the exercise of the inherent power.'

362 Mass. at 516, 287 N.E.2d at 615 quoting State ex rel. Hillis v. Sullivan, 48 Mont. 320, 329, 137 P. 392, 395 (1913). See also Matter of Salary of Juvenile Director, Wash., 552 P.2d 163, 173 (1976) (recognizing that the courts have "set a high standard for the application of inherent power in funding matters," placing a "burden. . . on the court to show that the funds sought to be

compelled are reasonably necessary for the holding of court, the efficient administration of justice, or the fulfillment of its constitutional duties.") (emphasis original).

As in the case of the inherent power of the court of an incidental nature, here too we conclude that the power of the court over its fiscal affairs did not justify the acceptance of the Bates Manufacturing gift and the use of the gift proceeds outside of the normal State procedures. We do not question the validity of the determination by the Chief Justice that it was desirable for the spouses of judges to attend the first Judicial Conference. But we can see no basis whatsoever for the view that their attendance was so essential to the effective functioning of the Court so as to depart from regular procedures governing the acceptance and expenditure of gifts. Moreover, even if one were to attach such an extraordinary significance to the presence of the spouses of judges at the conference, there was in fact a regular procedure pursuant to which this objective could have been accomplished and therefore there was quite clearly no emergency that would justify a departure from that procedure. The State Court Administrator, at the direction of the Chief Justice, could simply have authorized the reimbursement of the expenses of the spouses of the judges pursuant to 4 M.R.S.A. §471. Indeed, putting aside entirely the context in which the transactions in this case actually occurred, where the Governor did not approve the Bates Manufacturing gift, all of the state officers whom we have interviewed in this matter have assured us that had Chief Justice McKusick simply authorized the expenditure of State funds for the purpose of reimbursing the expenses of spouses

attending the Judicial Conference, that authorization would have been honored by the State Controller.^{20/}

20/ Apparently the Chief Justice decided not to follow this procedure because, as explained in his February 1, 1978 letter to Governor Longley, he "wanted to respect the rule otherwise prevailing in state government that the expenses of spouses in attending meetings are not reimbursable." The Chief Justice probably was referring to the Manual of Financial Procedures promulgated by the Commissioner of Finance and Administration which regulates travel and expense reimbursement for state employees. This Manual of Financial Procedures does not, as a general rule, permit the reimbursement of spouses' expenses at meetings and conferences. The existence of this rule raises the question not only of whether the Chief Justice's authorization of public funds for reimbursement of the expenses of spouses would have been honored, but also whether the use of the Bates Manufacturing contribution for this purpose was proper.

During the course of our investigation in this matter, we have interviewed the present Commissioner of Finance and Administration, the former and present State Controller, the former and present State Budget Officer, the present State Auditor and the present Supervisor of the pre-Audit Division of the State Controller's Office. Each of these state officials, to some extent, have the responsibility of implementing and enforcing the regulations on expense reimbursement contained in the Manual of Financial Procedures. Without exception, each of these state officials have advised us that the Manual governing expense reimbursement applies only to those departments and agencies within the Executive Branch of Government and has never been viewed as binding on the Judicial Department, except to the extent that the Judicial Department has voluntarily chosen to be bound by it. This interpretation of the Manual of Financial Procedures by those state officials charged with the responsibility of enforcing it is, in our view, entitled to considerable weight especially in view of the ambiguity of applicability of the provisions in 5 M.R.S.A. §1541 governing the scope of the authority of the State Controller and the Commissioner of Finance and Administration over travel expense reimbursement to the Judiciary. See, e.g., Dupler v. City of Portland, 421 F.Supp. (D.Me. 1976); Witt v. Secretary of Labor, 397 F. Supp. 673 (D.Me. 1975); Brooks v. Smith, Me., 356 A.2d 723 (1976). Moreover, in actual practice the Manual has merely been applied to the Judiciary as a voluntary guideline. For example, we have been informed that the Judicial Department has customarily authorized higher expense limits for meals and lodging, has allowed expenses on a per diem as opposed to a per meal basis and has adopted more lenient regulations regarding the submission of receipts.

Accordingly we conclude that the receipt and expenditure of the Bates Manufacturing contribution through a commercial bank account was not justified by any of the inherent powers of the court and that the failure to follow the regular state procedures for the gift constitutes an "improper practice of financial administration." See 5 M.R.S.A. §244. The ramifications of this conclusion will be treated separately below in Section IV which covers the conclusions of this office with regard to all the aspects of the transactions reviewed in this report.

III. THE CODE OF JUDICIAL CONDUCT

In our view, the propriety of this transaction is most appropriately analyzed in accordance with the applicable provisions of the Code of Judicial Conduct, adopted by the Supreme Judicial Court effective April 1, 1974. We must confess some reluctance in addressing this subject. We are fully aware that the Legislature has empowered the Supreme Judicial Court to establish a Committee on Judicial Responsibility and Disability "to receive complaints, [and] make investigations . . . in regard to discipline, disability, retirement or removal of justices of the Supreme Judicial Court and the Superior Court and judges of the District Court. . . ." 4 M.R.S.A. § 9-B (1980-1981 Supp.). By an order dated June 26, 1978 (and effective July 5, 1978), the Supreme Judicial Court has, in fact, established the Committee on Judicial Responsibility and Disability. Ordinarily, we would defer to the Committee on questions of judicial ethics. We are also cognizant of the fact, however, that the non-judicial members of the Committee are appointed by the Supreme Judicial Court upon the recommendation of the Governor and that the Committee's authority to take disciplinary action against a justice or judge is limited to making recommendations to the Supreme Judicial Court. See Rule 2 I, Rules of the Committee on Judicial Responsibility and Disability. We also cannot ignore the possibility that the

Committee's relationship with the Supreme Judicial Court may generate the public perception that it is not entirely detached from the Chief Justice and the Court. In view of this possibility, we believe that the public's interest is best served by a review and analysis of the ethical concerns raised by this matter by a body not so closely associated with the Judicial Department.^{21/}

Since both the Governor and the Legislature have the authority to refer matters to the Committee on Judicial Responsibility and Disability, we also believe our report would be incomplete were we to omit a consideration of the possible ethical issues. Consequently, we have concluded that, in this particular instance, it is appropriate for us to offer our evaluation of this transaction in light of the pertinent Canons of the Code of Judicial Conduct.

In examining the ethical propriety of this transaction, we have, for analytical purposes, focused on two areas of inquiry. First, we have examined the Code of Judicial Conduct to determine whether the Chief Justice's solicitation of the contribution from Bates Manufacturing violated any provision of the Code. Second, we have examined the receipt and use of the funds received from Bates Manufacturing to determine whether this aspect of the transaction violated any provision of the Code.

^{21/} We emphasize that our sole concern is with the possible light in which the public might view the Committee. We have no reason to believe that the Committee would not, in fact, discharge its duties in an objective fashion.

A. Solicitation of the Funds

Our first task is to ascertain whether the Chief Justice's personal solicitation of the contribution from Bates Manufacturing violated any provision of the Code of Judicial Conduct. We have examined all of the provisions of the Code and we believe that there are four Canons which have some relevance on the issue of solicitation of funds by a judge. Canon 2 states the general rule that "[a] judge should avoid. . . the appearance of impropriety in all his activities." Canon 4 C governs a judge's membership in, and his fund raising for, a quasi-judicial organization. Canon 5 B(1) regulates a judge's participation and membership in civic and charitable organizations and specifically prohibits a judge's solicitation of funds on behalf of such organizations. Canon 7A(1)(c) forbids a judge to solicit funds for a political candidate or organization. In our view, the most relevant provision for purposes of our analysis is Canon 4 C, although, as discussed below, we are not certain that Canon 4 C was literally intended to apply to a statutorily created and publicly financed organization such as the Judicial Conference of Maine.

In general, Canon 4 governs the extent to which a judge may engage in quasi-judicial activities. Canon 4 C specifically addresses the question as to whether a judge may be a member of an organization, such as a judicial conference, which is devoted to the improvement of the law, the legal system, or

the administration of justice,^{22/} and provides guidance as to the extent to which a judge may engage in fund raising activities on behalf of such an organization. Canon 4 C provides, in its entirety, as follows:

"He [a judge] may serve as a member, officer, or director of an organization devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice."

While Canon 4 C gives some latitude to a judge to assist an organization, such as a judicial conference, in raising money, it also contains an explicit prohibition against the personal solicitation of funds by a judge. The rationale underlying this prohibition is explained by Professor Thode in his Reporter's Notes to the Code of Judicial Conduct.

^{22/} The Commentary to Canon 4 of the American Bar Association's Code of Judicial Conduct, upon which Maine's Code is modelled, expressly recognizes that

"[a]s a judicial officer and person specifically learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice. . . . To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law."

"One of the difficult issues faced by the Committee [on Standards of Judicial Conduct] was the participation by judges in fund raising and the investing of funds for organizations that fall within the scope of Canon 4C. Canon 5B(2) forbids judges to become involved in raising or investing funds for civic, charitable, and other similar organizations. Is there sufficient difference between the two situations to support different standards? The Committee's answer was 'Yes.' One difference is the practical one that the membership of many of these Canon 4 organizations is entirely, or substantially, made up of judges, whereas judges normally comprise a small percentage of the membership of civic or charitable organizations. To deny any judicial participation in fund raising in the former situation would be effectively to exclude such organizations from engaging in projects that require substantial financing. The Committee was not willing to do this. On the other hand, it was not willing to authorize judges personally to solicit funds for any organization. The solution adopted authorizes a judge to assist in fund raising for Canon 4 organizations but not to the extent of personally participating in public fund raising activities. This distinction is primarily a matter of form, but the Committee felt it sufficiently insulates the judge from the donors and the donors from the judge, thereby reducing the possible appearance of impropriety or lack of impartiality implicit in fund raising by judges."^{23/} E. Thode, Reporter's Notes to Code of Judicial Conduct 76-77 (American Bar Association, 1973).

As the Reporter's Notes make clear, the reason why Canon 4 C forbids the personal solicitation of funds by a judge is not because such conduct is per se improper, but because it may

^{23/} It should be observed that the American Bar Association's version of Canon 4 C provides that a judge "should not personally participate in public fund raising activities" on behalf of a quasi-judicial organization. (emphasis added). Canon 4 C of the Maine Code of Judicial Conduct simply provides that a judge "should not personally participate in fund raising activities" for such organizations.

give the appearance of impropriety. The primary purpose for the prohibition against personal soliciation is to eliminate any perception that the judge may be using the prestige of his office to influence others to make contributions to an organization in which the judge may be interested. See, e.g., Informal Opinion No. 603 (American Bar Association Committee on Ethics and Professional Responsibility, November 2, 1962); Informal Opinion No. 390 (American Bar Association Committee on Ethics and Professional Responsibility, November 22, 1960) (". . . it is best for a judge simply to refrain from any personal sollicitations for contributions, no matter how laudable the purpose.") See also A Review of the Activities of Judicial Conference Committees Concerned with Ethical Standards in the Federal Judiciary, 78 FRD 247, 259 (1976). During the course of our research of this issue, we have become aware of an opinion issued by the Georgia Judicial Qualifications Commission concerning the propriety of a judge soliciating funds on behalf of the Judicial College of Georgia. In concluding that such soliciation is not proper, the Commission stated:

"As to the question posed concerning the propriety of soliciation by the judicial members of the trustees of the college, the Code of Judicial Conduct makes it clear, both with respect to quasi-judicial activities (Canon 4C) and with respect to extra judicial activities (Canon 5B(2)), that a judge should not personally participate in public fund raising activities or personally solicit funds for such respective purposes." Opinion No. 15, Georgia Judicial Qulaifications Commission at 3 (August 30, 1977).

As mentioned earlier, we are not certain that Canon 4 C was intended to apply to an organization such as the Judicial Conference of Maine which is statutorily mandated and publicly financed. See 4 M.R.S.A. § 471 (1979).^{24/} The language of Canon 4 C, as well as the Commentary and Reporter's Notes to it, implicitly suggest that the Canon was designed to reach those quasi-judicial organizations which a judge may voluntarily join and which, because of their voluntary nature, may require substantial private financing, whereas in this case we are concerned with a judicial conference that is statutorily mandated and publicly financed. Nevertheless, Canon 4 C states the principle, which runs throughout the Code of Judicial Conduct, that the personal solicitation of funds by a judge is not permissible because it creates the appearance of impropriety. Thus, it is unnecessary for us to decide whether the Chief Justice's personal solicitation of the contribution from Bates Manufacturing specifically violated Canon 4 C or whether it violated the general appearance of impropriety standard embodied in Canon 2, since under either Canon a violation of the Code of Judicial Conduct occurred.

24/ 4 M.R.S.A. § 471 (1979) provides, in its entirety:

"There shall be a Judicial Conference of Maine composed of judges and justices who shall advise and consult with the Supreme Judicial Court and the Chief Justice on matters affecting the administration of the Judicial Department, who shall review and discuss proposals from the Chief Justice and the State Court Administrator which affect the administration of the Judicial Department and who shall meet at least once a year for that purpose.

No member of said conference shall receive any compensation for his services, but said conference and the several members thereof shall be allowed, out of judicial appropriation, such expenses for clerical and other services and travel incidentals as the State Court Administrator shall approve."

B. Receipt and Use of the Funds

We have also analyzed this transaction in the context of those provisions of the Code of Judicial Conduct which might bear on the receipt and use of the funds from Bates Manufacturing. With respect to this aspect of our analysis, we believe there are two Canons which merit our consideration and scrutiny.

Canon 5C(4) of the Code of Judicial Conduct sets forth the provisions regulating the acceptance of gifts by a judge, while Canon 6C deals with expense reimbursement for quasi-judicial and extra-judicial activities. Preliminarily, it should be observed that these Canons may overlap to some degree. Moreover, it is not entirely clear whether, for analytical purposes, the receipt of the funds from Bates Manufacturing should be viewed as a gift under Canon 5C(4) or as expense reimbursement under Canon 6B. In the final analysis, however, under either Canon, the propriety of the receipt of the funds depends on their source.

Canon 5C(4) states the general rule that

"[n]either a judge nor a member of his family residing in his household should accept a gift, bequest, favor or loan from anyone except as follows:

* * * *

- (c) a judge or member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor

is not a party or other person whose interests ^{25/}
have come or are likely to come before him. . . ."

Canon 6B of the Code of Judicial Conduct provides in its
entirety:

"A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

* * * *

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation." ^{26/}

^{25/} Subsections (a) and (b) of Canon 5C(4) address specific types of gifts and are not directly relevant to the present situation. Those subsections provide as follows:

"(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants."

^{26/} Canon 6B clearly contemplates that, with respect to quasi-judicial activities, a judge may receive expense reimbursement for his spouse, "where appropriate to the occasion." Thus,

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An examination of the language of Canons 5C(4)(c) and 6B reveals that whether a particular transaction violated either Canon depends upon the source providing the funds. Read together, these Canons set forth three standards which must be analyzed to determine whether a particular source providing funds, either as a gift or as expense reimbursement, is a permissible one.

Under Canon 5C(4)(c) a judge may accept any gift "only if the donor is not a party or other person whose interests have come or are likely to come before him" Our investigation of this matter has produced no evidence to indicate that at the time of this contribution, Bates Manufacturing was a party or other interested person in any matter before the courts of Maine or was likely to become such in the future.^{27/} Accordingly, we do not

26/ Cont.

the Canon explicitly recognizes that the reimbursement of a spouse's expenses at a Judicial Conference is not necessarily improper. Of course, what constitutes an "appropriate occasion" is a rather vague standard. However, in view of the importance which the Chief Justice and other members of the Court attached to the attendance by spouses at the 1978 Judicial Conference and the fact that the Conference program was designed to directly benefit the spouses, we cannot say that the 1978 Judicial Conference was not an "appropriate occasion" to provide for expense reimbursement. See also Canon 5C(4)(a) quoted in note 25 supra.

In view of both Canons 5C(4)(a) and 6B it is clear that there is nothing inherently improper in the mere fact that spouses attend a Judicial Conference or that their expenses are paid. Thus, if there is an ethical problem in this case, it would stem, not from the fact of reimbursement, but from its source.

27/ We would point out that the standard articulated in Canon 5C(4)(c) is a difficult one to apply since it provides no guidance as to how one determines the likelihood that a particular donor will become a potential litigant or interested party. The imprecision of this standard was recognized in an Informal Opinion of the American Bar Association's Committee on Ethics and Professional Responsibility wherein the following statement is made:

(Cont. next page)

believe that there is a basis for concluding that the receipt of the contribution from Bates Manufacturing was prohibited by the provisions of Canon 5C(4)(c).

Under Canon 6B, a judge may receive reimbursement of expenses for quasi-judicial activities, including, where appropriate, expense reimbursement for his spouse, "if the source of such payments does not give the appearance of influencing the judge in his judicial duties" We believe that this language of Canon 6B is essentially a restatement of the standard contained in Canon 5C(4)(c) and is designed to discourage the receipt of funds from a source which is or is likely to become a litigant or interested party before the judge. See E. Thode, Reporter's Notes to Code of Judicial Conduct 93 (American Bar Association, 1973). In view of the absence of evidence to indicate that Bates Manufacturing was likely to become involved in any matter before the courts of Maine, we do not believe that receipt of a contribution from that source gave the appearance of influencing the judicial duties of a judge.

27/ Cont.

" . . . how can it be ascertained that any particular person or institution is not likely to have litigation or be interested in litigation which is pending or may arise in . . . court."

Informal Opinion No. 390 (American Bar Association's Committee On Ethics and Professional Responsibility, November 22, 1960).

Finally, under Canon 6B of the Code of Judicial Conduct a judge may receive expense reimbursement for quasi-judicial activities "if the source of such payments does not . . . otherwise give the appearance of impropriety."^{28/} The underlying rationale of the "appearance of impropriety" standard is the preservation and promotion of "public confidence in the integrity and impartiality of the judiciary." See Canon 2A. The principal objective of the appearance of impropriety standard is to alert judges to the need to avoid conduct which, while not actually improper, may be perceived by the public as being improper. See Advisory Committee on Judicial Activities of the Judicial Conference of the United States, Advisory Opinion No. 47 (October 14, 1975); Edwards, Commentary on Judicial Ethics, 38 Fordham L. Rev. 259, 270-73 (1969); King, Judicial Activities and Ethics, 75 FRD 107 (1978); Ethics for Judges, National College of the State Judiciary (1975).

In attempting to apply the catch-all "appearance of impropriety" standard to the receipt of a contribution for reimbursing spouses' expenses, we are troubled by what we perceive to be a hopelessly vague test. Where the contributor has recently had business before a court or is likely to have such business in the future, the reason for concern seems apparent. On the other hand, where the contributor is a public or other non-profit entity which regularly makes grants to judicial conferences, it would be

^{28/} As previously observed, the obligation of a judge to avoid even the appearance of impropriety is also embodied in Canon 2 of the Code of Judicial Conduct.

difficult to question the propriety of the transaction. Between these extremes, a determination of whether the conduct gives rise to an appearance of impropriety strikes us as an extremely subjective judgment.^{29/} Furthermore, our examination of precedent from other jurisdictions fails to shed light on this question.

For the reasons stated in the preceding paragraph, we believe that any judgment we might offer as to whether the receipt and use of the Bates' contribution violated the appearance of impropriety standard under Canon 6B would reflect nothing more than a personal opinion not predicated on any special knowledge or expertise. Furthermore, in construing provisions which are designed to define misconduct, serious questions about their applicability are customarily resolved in the negative. Thus, while we are unable to definitively interpret Canon 6B, we believe that principles of fairness militate in favor of the conclusion that the receipt and use of the funds did not violate the Canon.^{30/}

^{29/} This standard is rendered even more idiosyncratic by virtue of the fact that whether one perceives a transaction as improper will depend in part upon the facts known to him and how well he understands those facts.

^{30/} We deem it appropriate to add, however, that to find such a violation in the present circumstances would require a conclusion that the appearance of impropriety standard could apply in the absence of a known or reasonably foreseeable connection between the contributor and the court. Thus, even allowing for the possibility of widely different views of what this standard means, we believe that if one were inclined to find a violation of Canon 6B, it would necessarily be of a relatively minor nature.

In any case, we think it unnecessary to resolve this question with respect to the Chief Justice. In reality, the solicitation and acceptance of the contribution are but two aspects of a single transaction. Since we have already concluded that the solicitation violated the Code, it would be superfluous to make an independent judgment regarding the receipt of the money. In the final analysis, the source from which the funds were received is more appropriately analyzed in determining whether the solicitation constituted a serious violation.^{31/}

31/ In light of the fact that questions may be raised about the acceptance by individual judges of reimbursement for their spouses' expenses, we would note that the only Canons even arguably applicable to that conduct are those discussed in this section. For the reasons stated in the text and in the preceding footnote, we do not see a reasonable basis for finding an ethical violation. In addition, this facet of the transaction must be considered in the context of two other factors. First, the reimbursement was paid by the Judicial Department under arrangements made by the Chief Justice who had encouraged attendance by spouses. Second, the reimbursement received by any given judge was relatively small in nature. Since this entire matter was carried out under the auspices of the person with supervisory responsibility over the courts and since the judges receiving the reimbursement had no role in what we believe were the critical aspects of the transaction, we do not think it can be fairly argued that their acceptance of the reimbursement violated the Code of Judicial Conduct.

IV. CONCLUSION

Having recited the facts and examined the relevant legal and ethical provisions, it becomes necessary for us to place this matter in what we believe to be the proper perspective. The purpose of this section is threefold: (1) to restate our legal conclusions; (2) to assess the implications of those conclusions; and (3) to offer final recommendations.

A. Criminal Statutes

Since we have found absolutely no evidence of criminal conduct, we see no need for additional comment on this subject.

B. Statutes Regulating Governmental Operations

In our view, the handling of the contribution from Bates Manufacturing constituted a departure from the statutory procedures governing the acceptance of gifts and the expenditure of funds. Notwithstanding the existence of some arguably complex constitutional issues, we do not believe that this departure was justified by any inherent power residing in the Judicial Department.

Given the above conclusion, it is critical that we explain the nature of the statutory procedures which the Chief Justice failed to follow. The statutes in question are designed to provide for the orderly operation of State business. They do not purport to define "illegal" or "wrongful" conduct, nor do we believe they were so intended.

There are no penalties or sanctions provided in the event of a violation. In short, we do not believe that the failure to follow those statutes by itself amounts to "wrongdoing," as that term is commonly understood.

We do not mean to suggest that laws regulating State business can be ignored. Rather, our point is that violations of these statutes take on the stigma of wrongdoing only if knowingly committed. In this instance, it seems apparent that the Chief Justice was guided by the view that the Judicial Department properly could accept and expend private contributions outside of the normal State procedures applicable to gifts to the State.

For the reasons stated in the preceding paragraphs, we believe that the public interest is fully served in this case by the recognition that there is a procedure for handling gifts to the State, that this procedure serves the important function of insuring uniformity of policies with regard to the acceptance and use of gifts, that this procedure applies to the Judicial Department, and that this procedure was not followed.

C. Code of Judicial Conduct

In Part III of our report, we concluded that the solicitation of the contribution from Bates Manufacturing violated the Code of Judicial Conduct. Since ethical canons are a subject with which most people are unfamiliar, we believe that the significance of our conclusion requires extended discussion.

The Code of Judicial Conduct contains prohibitions which are expressed in very general terms. As a result, a violation of a canon can range from serious wrongdoing to an error in judgment. In our view, the conduct involved here clearly falls in the latter category. We shall proceed to explain the basis for this view, a process which will require a recapitulation of certain salient facts.

Preliminarily, it should be emphasized that we are dealing with an appearance of impropriety. As that term suggests, the conduct is prohibited, not because it is actually improper, but rather because it may create suspicion in the public mind. With the benefit of a thorough factual investigation, we are now in a position to conclude that there was indeed no actual impropriety underlying the transaction between the Judicial Department and Bates. There is no evidence that a public office was used for personal gain. There is no evidence that a public trust was violated or that such a violation was either sought or contemplated. In short, the inappropriateness of the Chief Justice's conduct derives not from the fact that wrongdoing occurred, but from the fact that wrongdoing might have been suspected.

There seems no doubt that the Chief Justice's actions were motivated by a need to remedy what he perceived, with apparent justification, as a morale problem in the Judicial Department. His strong desire to have spouses attend the Judicial Conference stemmed from his feeling that this problem could be most

effectively overcome by creating a spirit of cohesiveness within the judiciary. In short, his objective was to improve the state of the branch of government over which he had only very recently assumed responsibility.

While his approach to Bates was inappropriate under the Code, his choice of that company lessens the seriousness of his error in judgment. The Chief Justice initially decided that, notwithstanding the importance he attached to the attendance of spouses at the Judicial Conference, he did not wish to pay for this expense from tax dollars and thereby deviate from an established policy of the Executive Department. When his attempt to find a foundation grant proved unsuccessful, he turned to Bates since he could call upon a 20-year professional and personal relationship with the management of that company. That relationship minimized, and perhaps eliminated, the risk that his overture would be perceived as coercive. Furthermore, his detailed familiarity with their business interests enabled him to conclude that there was no likelihood that Bates would have any future dealing with the courts of Maine. Thus, he could be comfortable in his own mind that an actual conflict of interest would not arise.

In the final analysis, what is most revealing is the openness with which the matter was handled. The Judicial Conference program, which we understand was distributed to the press, prominently displayed an acknowledgement of the Bates' gift. In his opening remarks to the Conference, the Chief Justice publicly thanked the company for providing the

funds to reimburse the expenses of the judges' spouses. Similarly, his letter to Governor Longley set out the transaction in detail. Finally, the entire matter has come before the public because the Judicial Department took steps to insure that it was brought to the State Auditor's attention.

We believe that the Chief Justice violated the Code of Judicial Conduct. We believe that it was a violation committed by a new Chief Justice genuinely desirous of strengthening Maine's court system and probably unfamiliar with the absolute nature of some of the canons of judicial conduct. We believe that it was a violation which did not involve any actual misuse of public office. We believe it was a violation solely because of the potential that it could arouse public suspicions of wrongdoing. Whether such suspicions were in fact aroused is not for us to determine; we can say, however, that if such suspicions were aroused, all the evidence indicates that they were unfounded.

Based on the foregoing analysis we do not believe that the ethical violation requires further action. While we recognize that this matter is within the jurisdiction of the Committee on Judicial Responsibility and Disability, we think that it is unnecessary to refer it to that Committee. Rule 2 (H)(i) of the Committee provides that if that body finds a violation of the Code it must also determine whether it is "of such a serious nature as to warrant formal disciplinary action." We do not believe that the violation which occurred is of that magnitude. The Committee is of course free to inquire on its own initiative, but we believe that such further inquiry is not warranted.

* * * * *

I have endeavored in this report to set out at length my findings of fact, my legal analysis and my conclusions. I have done so because I believe that the public is entitled to a full accounting of the conduct of government officials. Only with such an accounting can the people make an informed judgment about the operation of their government.

Having provided you with a comprehensive report, I think that it is also appropriate for me, as Attorney General, to offer my final assessment on this subject. It is my view that the Chief Justice committed an error in judgment with respect to the contribution from Bates Manufacturing. When viewed in light of all the facts, however, his error did not constitute a betrayal of the public trust which has been reposed in him.

As with all events which generate public concern about the conduct of government officials, this incident may indicate a need for more clarity in the rules which govern judicial behavior. That subject, however, is beyond the scope of my report. With respect to the specific matter which you requested me to examine, it is my considered opinion that no further action is warranted.

Respectfully submitted,

RICHARD S. COHEN
ATTORNEY GENERAL

APPENDICES

APPENDIX I

ITEMIZED SUMMARY OF THE EXPENDITURES
OF THE CONTRIBUTION FROM BATES MANUFACTURING

Spouse Name	Payments for Lodging No. Days	Amount	Payments for Meals No. Meals ¹	Amount	Prorated Value of ² Banquets	Total Benefit
Mrs. Benoit	2	12.00	----	.00	26.34	38.34
Mrs. Violette	3	18.00	3B,L,3D	32.74	26.34	77.08
Mrs. Rubin	3	18.00	3B,2D	29.00	26.34	73.34
Mrs. Perry	2	12.00	2B,D	12.78	26.34	51.12
Mrs. Turner	2	12.00	----	.00	26.34	38.34
Mrs. Spill	2	12.00	2B	4.36	26.34	42.70
Mrs. MacDonald	2	12.00	----	.00	26.34	38.34
Mrs. Aldrich	2	12.00	----	.00	26.34	38.34
Mrs. Danton	2	12.00	B	2.31	26.34	40.65
Mrs. Williams	2	12.00	2B,D	16.00	26.34	54.34
Mrs. Pilot	2	12.00	2B,D	12.75	26.34	51.09
Mrs. Nadeau	2	12.00	3B,2D	23.60	26.34	61.94
Mrs. Clark	2	12.00	3B,D	14.50	26.34	52.84
Mrs. Scales	2	12.00	B,D	12.93	26.34	51.27
Mrs. Alpren	2	12.00	D	10.00	26.34	48.34
Mrs. MacInnes	2	12.00	2B,D	14.75	26.34	53.09
Mrs. Reid	2	12.00	D	10.00	26.34	48.34
Mrs. Scolnik	2	12.00	2B,D	16.00	26.34	54.34
Mrs. Dufresne	2	12.00	2B,D	10.00	26.34	48.34
Mrs. Pomeroy	2	12.00	----	.00	26.34	38.34
Mrs. Wathen	2	12.00	----	.00	26.34	38.34
Mrs. Stern	2	12.60	----	.00	26.34	38.94
Mrs. Archibald	3	18.90	3B,2D	22.81	26.34	68.05
Mrs. Roberts	3	18.90	3B,2D	27.75	26.34	72.99
Totals for Known Spouses at First Judicial Conference						
		314.40		272.28	632.16	1218.84
Totals for Unknown Spouses at First Judicial Conference						
		.00		.00	184.26	184.26
Totals for Spouses at Second Judicial Conference						
		.00		.00	609.72	609.72
Grand Totals						
		314.40		272.28	1426.14	2012.82

1. B=breakfast, L=luncheon, D=dinner

2. The total banquet cost for the First Judicial Conference was prorated based on estimated total attendance of 81 and estimated spouse attendance of 31. The total banquet payments on behalf of spouses was 816.42 which divided by 31 gives \$26.34.

Income

Bates Manufacturing Co., Inc.	2,000.00	
Maine Savings Bank-Interest	19.80	
Total Income		2019.80

Expenses

On behalf of Spouses - Meals and Lodging	586.68	
To Holiday Inn - Banquets	816.42	
To Samoset Inn - Banquets	609.72	
To Canal National Bank - Service Charges	6.98	
Total Expenses		2019.80



OFFICE OF
 SECRETARY OF STATE
 RECEIVED
 JAN 4 1979
 AUGUSTA, MAINE

APPENDIX II
 State of Maine
 Executive Department

FINANCIAL ORDER
 00457 F8

Finance and Administration
 Department Name

NOT APPROVED
 BY GOVERNOR

ORDERED,

That the Judicial Department is authorized to accept a gift of \$2,000 from Bates Manufacturing Company.

BE IT FURTHER ORDERED

That the State Controller increase the allotment \$2,000 in account #4040.2 Judicial Department Projects

BE IT FURTHER ORDERED

That the State Controller authorize the expenditure in accordance with the attached "Request for Revision of Work Program for the Fiscal Year Ending June 30,, 1978," for which this shall be our sufficient warrant.

STATEMENT OF FACT:

The Judicial Department has received \$2,000 from Bates Manufacturing Company to help defray the cost of the Judicial conference to be held February 2-4, 1978.

[Handwritten Signature]

 Signature of Department Head

FOR BUREAU OF THE BUDGET USE ONLY

[Handwritten Signature]

 Signature of State Budget Officer

Policy Area: 00: General Government
 Umbrella Number and Name: 08: Finance and Administration
 Unit Number and Name: 117: Bureau of the Budget
 :
 Agency Contact: : O. W. Siebert, State Budget Officer
 Telephone: : 289-2881

APPENDIX III
STATE OF MAINE

457 F8

SUPREME JUDICIAL COURT

PORTLAND, MAINE 04112

VINCENT L. MCKUSICK
CHIEF JUSTICE

February 1, 1978

The Honorable James B. Longley
Governor of Maine
State House
Augusta, ME 04333

Re: \$2,000 Contribution by Bates Manufacturing
Company, Incorporated, to 1978 Judicial
Conference

Dear Jim:

I am writing in confirmation of my telephone call to Joe Hochadel this noon. I have been very anxious that spouses of judges should attend the first annual Judicial Conference being held here in Portland tomorrow through Saturday, February 2-4. On the other hand, I wanted to respect the rule otherwise prevailing in state government that the expenses of spouses in attending meetings are not reimbursable. Accordingly, I have gone out to seek charitable funds for this purpose and was pleased to be able to obtain the contribution from the Board of Directors of Bates Manufacturing Company, Incorporated, who, I am sure, made the funds available out of respect for my many years in the past of representing them here in Maine. Bates Manufacturing Company, Incorporated, no longer has any business interest in Maine, having sold the Bates plant in Lewiston to an employee stock ownership trust a year or so ago. Thus, from the point of view of our Maine courts, this gift cannot, as I see it, cause any embarrassment in the future in litigated cases involving Bates. I view this very similar to grants by Xerox for public broadcasting.

I should say that the only items of expense of the wives that I would anticipate reimbursing are conference meals and lodging at the conference site.

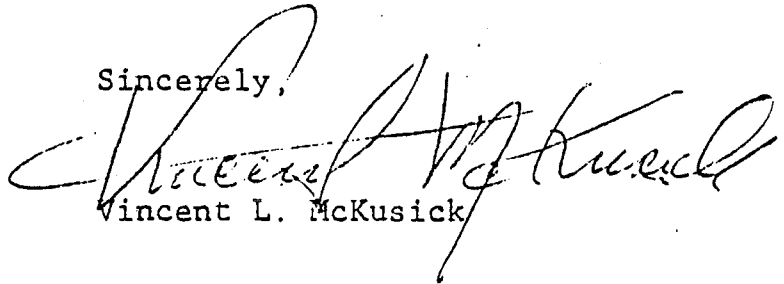
We look forward to having you with us at the conference Saturday noon and to your remarks to the judiciary. I am much excited about this first Judicial Conference and am most confident that it will contribute substantially to the family or

The Honorable James B. Longley
February 1, 1978
Page Two

partnership feeling within the judiciary. I am informed that not only is every one of the active and active retired judges planning to attend, but also all the other retired judges, with the sole exception of Justice Marden and Judge Varney who are in the South. It will, I am sure, be a fine gathering of the clan, but more than the pleasantness of the occasion, I am confident that the collective judgment of the conferees on the current status of the judicial system and on where we go from here will bear good fruit.

With best wishes,

Sincerely,

A handwritten signature in cursive script, appearing to read "Vincent L. McKusick". The signature is written in dark ink and is positioned above the printed name.

Vincent L. McKusick

VLM:ln

cc. Mr. Otto W. Siebert
Mrs. Elizabeth D. Belshaw