

# MAINE STATE LEGISLATURE

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July 13, 1939

C. W. Lovejoy  
Insurance Commissioner  
State House  
Augusta, Maine

Dear Sir:

In re: Inquiry of Hurley regarding  
insurance at Squirrel Island.

In answer to your inquiry of July 11, I have to inform you that Section 11 of Chapter 131 of the Revised Statutes provides, in effect, that: "No officer of a quasi-municipal corporation shall be pecuniarily interested, directly or indirectly, in any contracts made in behalf of the quasi-municipal corporation in which he holds such place of trust, and any contract made in violation hereof is void."

The courts have said, in effect, that: "It may be laid down as a general rule that where a body is created by Statute, possessing powers and duties which involve, incidentally, unqualified capacity to sue and be sued, such body is to be considered a quasi corporation." It is probable that "Squirrel Island Village" is a quasi-municipal corporation and would be subject to all laws relative thereto.

From Mr. Hurley's letter, it seems to be evident that Henry Faxon, who is the Chairman of the Board of Overseers of the village corporation, is a stockholder and the treasurer of the Quincy Mutual Fire Insurance Company, and as such, has a financial interest in said company. Our courts have held that: "It is well established as a general rule, that one acting in a fiduciary relation to others, is required to exercise perfect fidelity to his trust, and the law, to prevent the neglect of such fidelity, and to guard against any temptation to serve his own interests to the prejudice of his principal's, disables him from making any contract with himself binding on his principal. The invalidity of a contract entered into in violation of this rule does not necessarily depend upon whether the fiduciary intended to obtain an advantage to himself, but rather upon whether it affords him the opportunity, and subjects him to the temptation, to obtain such advantage. The

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test is not whether harm to the public welfare has in fact resulted from the contract, but whether its tendency is that such harm will result."

Our statute formerly provided that: "No person holding a place of trust in any State office shall be pecuniarily interested in any contracts made in behalf of the State." By Chapter 211 of the Public Laws of 1927, this statute was amended so as to make it applicable to officers of quasi-municipal corporations. In 1911, the State of Maine awarded a contract for doing certain printing for the State, to the Waterville Sentinel Publishing Company, a corporation. The work was awarded to said company, after competitive bids had been submitted, it being the lowest bidder. The Secretary of State was a stockholder in said company and the treasurer of said company at the time that the contract was awarded. Although he had nothing to do with the awarding of the contract or with the auditing of the bills presented on account thereof, or approval for payment of the same, in this case it was held by the Justices of the Supreme Judicial Court, that the contract was void.

It appears to me that our statute is a wise one, and, in the language of the court in the case of J'Neil v. Flannigan and City of Portland, Trustee, and Johnson, claimant, it "tends to honest dealing, and exclusion of motive for improper practices harmful to the community. It should be applied without evasion to all contracts falling within its provisions."

Very truly yours,

Sanford L. Fogg  
Deputy Attorney General

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