

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

January 21, 1958

To: G. Carleton Lane, Acting Chairman of Maine Industrial Building Authority

Re: Last Paragraph of Section 4, Chapter 421, Public Laws of 1957
Decision on contract of insurance; Participation in re interests

The Authority has inquired as to the effect of the last paragraph of Section 4 of Chapter 421 of the Public Laws of 1957 and what action the Authority should take if and when this section of the law is applicable. A brief resumé of the law and its passage may be helpful to us in understanding the intent and application of this section. At the outset, Legislative Document 1614, Senate Paper 620, "An Act to Create the Maine Industrial Building Authority," had no such provision as is now found in the last paragraph of Section 4. However, Section 17 of Chapter 135, Revised Statutes of 1954, would have undoubtedly applied as it would be our opinion that the members of the Authority would have been holding a place of trust in a state office within the meaning of that statute which is as follows:

"No trustee, superintendent, treasurer or other person holding a place of trust in any state office or public institution of the state, or any officer of a quasi-municipal corporation shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the state or of the institution or of the quasi-municipal corporation in which he holds such place of trust, and any contract made in violation hereof is void; . . ."

During the legislative session at which time the Industrial Building Authority Act was being considered, the Senator from Androscoggin, Senator Lessard, came to me and asked me to draft for him an amendment which would prohibit the Authority from entering into any contract of insurance where any of its members or its manager had any interest, direct or indirect, in certain prescribed fields. I complied with his request and out of it arose Committee Amendment B to Senate Paper 620, Legislative Document 1614. This amendment reads as follows:

"The authority shall not enter into any contract of insurance where any of the members of the authority or its manager has any interests, direct or indirect, in any firm, partnership, corporation or association which would be a mortgagee, whose loan to a local development corporation is insured by the authority, or has any interest, direct or indirect, in any firm, partnership, corporation or association which would rent, lease or otherwise occupy any premises constructed by a local development corporation where said corporation's mortgage is guaranteed by the authority, or is a director or officer or otherwise associated with any local development corporation, whose mortgage is guaranteed by the authority."

Later on Senate Amendment A to Committee Amendment B was offered by the same Senator and that amendment was adopted in the Senate, concurred in by the House, and is now what we call the last paragraph of Section 4 which now reads as follows:

"No member of the authority shall participate in any decision on any contract of insurance if he has any interests, direct or indirect, in any

firm, partnership, corporation or association which would be a mortgagee, whose loan to a local development corporation is insured by the authority, or if he has any interest, direct or indirect, in any firm, partnership, corporation or association which would rent, lease or otherwise occupy any premises constructed by a local development corporation where said corporation's mortgage is guaranteed by the authority, or if he is a director or officer or otherwise associated with any local development corporation, whose mortgage is guaranteed by the authority."

It is obvious from the review of the passage of the act that what started out to be a direct prohibition has now become a very limited one. The limitation is plainly and simply that the member who finds himself interested as described in the last paragraph of Section 4 does not participate in any decision which may have an effect upon his interest.

Section 17 of Chapter 135, in our opinion, does not apply because the Legislature has seen fit to deal with this particular matter in a particular way. In order to protect the Authority and any contract of insurance any member of the Authority who is interested in any of the degrees set forth in the last paragraph of Section 4 of the act should, when a contract of insurance is before the Authority for approval or disapproval, have noted on the minutes of the meeting, if he is one of those indicated to be present, that he abstained from participating in the vote or in any discussion with regard to the contract of insurance for the reason that he was interested within one of the degrees set forth in the act, and his interest should be clearly and concisely set forth.

While a member may not participate in a decision because of the statute, he may, nevertheless, be counted as being present for the purpose of ascertaining whether a quorum is on hand to give the Authority the necessary power to carry on its normal operations.

Whether or not a member is interested within the meaning of the last paragraph of Section 4 in a given instance may be a close question of both fact and law. If doubt should arise in any member's mind with regard to his right to participate, his relationship to any interested party should be immediately referred to this office so that a determination may be made.

The statute is silent as to what the effect might be of a member voting or participating in a vote where he is interested. The contract may be either void or voidable, but the long and the short of it is that no such situation should ever arise; so this question need not be discussed further.

ROGER A. PUTNAM
Assistant Attorney General

January 21, 1958

To Norman U. Greenlaw, Commissioner of Institutional Service

Re: Commitment to State Hospitals

This will advise that it is our opinion that patients at your mental hospitals who were committed under the law which was declared unconstitutional by our court should be re-committed under the provisions of the present statute.