

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

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.

It is our understanding that such proceedings have been followed in the past and that therefore the procedure is a familiar one. However, if this information is wrong and you desire help in the preparation of the proper form of petition, please advise.

JAMES GLYNN FROST
Deputy Attorney General

January 21, 1958

To A. D. Nutting, Forest Commissioner

Re: Removal of Logs from Great Ponds

It is our opinion that authorization from the legislature would be necessary for a person to enter the business of removing logs from great ponds.

It would perhaps be wise for a person desirous of removing such logs to have an authorization from the legislature to the effect that such interest as the State may have in the logs on the bottom of great ponds be conveyed to the person removing such logs.

While this would protect the worker from any claim by the State of Maine for such logs, it should be clearly understood that if such logs did not belong to the State of Maine, such authorization would not protect the taker from action by the owner.

JAMES GLYNN FROST
Deputy Attorney General

January 27, 1958

To Michael A. Napolitano, State Auditor

Re: Qualified Public Accountants

Your memo of January 8, 1958, reads as follows:

"Section 26 of Chapter 90-A, Public Laws of 1957 provides that 'Each municipality and quasi-municipal corporation shall have an annual postaudit made of its accounts covering the last complete fiscal year by the State Department of Audit or by a qualified public accountant elected by ballot or, if not so elected, engaged by its officers. The postaudit shall be conducted on the basis of auditing standards and procedures prescribed by the State Auditor.'

"Will you kindly render your opinion as to the definition of a qualified public accountant within the meaning and intent of this chapter?"

"What recourse would the department have in the event that the municipal officials hired a person to conduct an audit who was not qualified?"

We would expect a qualified public accountant to be a person of sound mind and of such capabilities and competence as would cause the town to place trust and confidence in that accountant.

We should not expect that your department would have any recourse if municipal officers hired a person to conduct an audit who was not qualified.

Subsection 1 of Section 26 would seem to be a remedy, in the event the voters of a municipality were dissatisfied with a postaudit made by a public