

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

“(b) When the collateral is consumer goods, then in the office of the clerk of the municipality in which the debtor resides, or if the debtor (I) is not a resident of the State, or (II) resides in an unorganized place, then in the office of the Secretary of State;”

The Secretary of State is under no obligation to determine whether a recording is proper. In acting as a recorder the Secretary of State performs a mere ministerial act. He accepts and records what is presented to him. He does not question or advise on the validity of any recording made in his office.

GEORGE C. WEST

Deputy Attorney General

December 23, 1963

To: Steven D. Shaw, Administrative Assistant, Executive

Re: Conflict of Interests — Aeronautics Commission

Facts:

Chapter 24, section 4, provides that the aeronautics commission shall consist of 5 members. “. . . one member shall be regularly employed in the aviation trades.” Appointment is by governor with the advice and consent of the council.

A candidate holds a sales franchise for a well-known airplane. Two questions may arise if he is appointed.

Question No. 1:

Can a member of the aeronautics commission, holding an airplane sales franchise, sell his product to the commission?

Question No. 2:

Can a member of the aeronautics commission, holding an airplane sales franchise, sell his product to other branches of the state government?

Answer To Both Questions:

No.

Reason:

R. S. 1954, chapter 135, section 17, provides, “No trustee, superintendent, treasurer or *other person holding a place of trust in any state office* or public institution of the state, . . . shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the state or of the institution . . . in which he holds such place of trust, and any contract made in violation hereof is void;” (Emphasis supplied).

The above is the sole statute relating to this subject. The important phrase is that italicized. It is sufficient to bring the situation outlined in the facts and questions within its purview.

Certainly a member of the aeronautics commission is a “person holding a place of trust in any state office.” The members of this commission are appointed by the governor with the advice and consent of the council. They are qualified to their office by an oath required and set forth in Article IX, section 1, of our Constitution. Each is appointed to an executive office and as such becomes a public officer.

"Furthermore, the statute was not intended as simply an affirmation of a principle of the common law, but as a more comprehensive legislative rule founded in public policy. The legislature must be presumed to have had in contemplation all of the contracts which might have been made by the different State officers, and to have enacted the statute for the purpose of removing any temptation on their part to bestow reciprocal benefits upon each other, and of preventing favoritism, extravagance and fraudulent collusion among them under any circumstances which might be reasonably anticipated as likely to arise under different State governments in the years to follow. . . . But it was obviously impracticable to anticipate and specify in the statute the great variety of situations that might arise, and in order to accomplish the purpose of the statute and prevent the mischief designed to be remedied, *the legislature was compelled to declare in general terms that no State officer should have a pecuniary interest in 'any contract' made in behalf of the state.*" (Emphasis supplied). *Opinion of the Justices*, 108 Maine 545 at 552. See also *Lesieur v. Rumford*, 113 Me. 317 at 322.

From the foregoing it becomes obvious that any contracts that might be made by the state with a member of the aeronautics commission would be void.

GEORGE C. WEST
Deputy Attorney General

January 6, 1964

To: Miss Edith L. Hary, Consultant
Informal Committee on Legislative Apportionment
State House
Augusta, Maine

Dear Miss Hary:

Re: Apportionment of House of Representatives

Facts:

The 101st Legislature approved amendments to the Constitution creating a new method of apportioning the House of Representatives. This was chapter 75, Resolves of 1963. These amendments were ratified by the people in November, 1963.

An informal committee was appointed to prepare a suggested apportionment resolve to be acted upon at a special session in January, 1964. Two questions have arisen as a result of the committee's deliberations.

Question No. 1:

Does the constitutional provision re apportionment (Const. Art. IV, Part First, Sec. 3) permit the combination of a town — or towns — not containing the county unit base number with a municipality which does fully contain the county unit base number one or more times?