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Conflict of Interest Section of the Municipal Industrial and Recreational Obligations Act.

FACTS:

Public Laws of Maine 1965, Chapter 423 (30 M.R.S.A. Chapter 242 additional) passed by the 102nd Legislature, is an act cited as 'Municipal Industrial and Recreational Obligations Act.' The Act becomes effective September 3, 1965. The Act provides inter alia for the establishment of an 'Industrial and Recreational Finance Approval Board' 30 M.R.S.A. section 5327, and also contains a section entitled 'Conflicts of Interest' 30 M.R.S.A. section 5330.

QUESTION:

If the Governor appointed an executive of a bank as a member of the Industrial and Recreational Finance Approval Board, would a conflict of interest develop if the bank, who would be the employer of the Board member, purchased securities issued by a municipality, after having received Board approval for the issuance of revenue obligation securities?

ANSWER:

See opinion.

OPINION:

Whether or not a conflict of interest would arise would depend upon whether or not the Industrial and Recreational Finance Approval Board member, who was an executive of the bank purchasing the revenue obligation securities of the municipality, had participated in the decision of the Industrial and Recreational Finance Approval Board approving the issuance of the securities. If there were such a participation, a conflict of interest would arise. If there were no such participation, no conflict of interest would arise.

30 M.R.S.A. section 5330 reads as follows:

"No member of the board shall participate in any decision on any contract entered into by any municipality under this chapter if he has any interest, direct or indirect, in any firm, partnership, corporation or association which may be a party to such contract, or if he has any interest, direct or indirect, in any firm, partnership, corporation or association which may rent, lease or otherwise occupy any premises constructed by such municipality."

An executive of a bank, even though not a shareholder of that bank, has an interest in the earnings of the bank. If the bank prospers, the prosperity could be reflected in his salary and/or other pecuniary fringe benefits. This is at least an indirect benefit to the executive. Of course, if the executive of a bank is also a shareholder of the bank, an increase in earnings also will be of a direct benefit to him as an increase in his equity or in the form of additional dividends.

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