

MAINE STATE LEGISLATURE

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December 8, 1967

Thomas E. Needham, Esquire
Assistant City Solicitor
Bangor, Maine

Dear Tom: Re: Bangor Public Housing Authority

I have your letter of December 7 relative to the above matter. I understand that the problem relates to the question of a conflict of interest between a person being a member of the City Council and a Commissioner of the Public Housing Authority within the city. You have asked if we could give you an opinion on this matter. I do not feel that we can give you an official opinion to you on this matter. I am willing, however, to give you my thinking which is entirely unofficial.

There are two types of conflicts of interest. One is an express conflict as set forth by statute. The second is a conflict where the duties of the two offices conflict. In other words, where a person cannot do the duty of one office without conflicting with his duty in another office.

I believe that such a conflict exists in the situation of a member of the City Council being a Commissioner of the Housing Authority. Of course, I am not familiar with the Bangor city charter so that I do not have the advantage of comparing the provisions of your charter with the Public Housing Authority law. However, I think the areas which I am going to point out would apply regardless of the provisions of your city charter.

The first area is covered by 30 M.R.S.A. § 4604. This section provides that the "governing body of the city" may

dismiss or remove a commissioner for cause. It would seem to me that if 5 members of the City Council are commissioners and then sit with a council hat on to listen to charges against one of the members of the commission, they are in a conflicting position.

The second provision is section 4652, subsection 5. This section provides that the property of an Authority is exempt from taxes and special assessments by the city. However, it further provides, "In lieu of taxes on its property an Authority may agree to make such payments to the city, the town . . . as it finds consistent with the maintenance of the low rent character of housing projects or the achievement of the purposes of this sub-chapter." In this situation you would have the 5 commissioners making an offer to themselves as councilmen, and the 5 councilmen deciding whether the offer they make as commissioners is proper. Certainly this creates a conflict.

The next provision is section 4657. This relates to things which a "state public body" may do. A "state public body" is defined by section 4552 as a city, town, district or other political subdivision of the state. In every one of the 9 subdivisions of section 4657, it would appear that the City Council must make a decision as to whether the city will do certain things in relation to the Authority. Here again you would have 5 persons wearing their council hats deciding to pave a road, put in a sewer, or some other matter for the benefit of an Authority, of which these 5 persons also wear the commissioner's hat. Certainly there is a definite conflict of interest in this area.

There is also section 4702 under which a municipality has the power from time to time to lend or donate money to an Authority. Under this, the 5 commissioners wearing their commission hat could request a loan or donation from the city. The 5 councilmen wearing the council hat could grant the loan or donation. Certainly this creates a conflict of interest.

There may be some other similar areas that I have not run into. I have just skimmed the surface of the statute and do not claim to be any authority on the Public Housing Law. I do feel, however, that there is definitely a conflict of interest on the part of one or more members of the Council being commissioners of the Authority. The above is my thinking for whatever value it may have for you.

Very truly yours,

George C. West
Deputy Attorney General

GCW:H