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Conflict of Interest under 30 M.R.S.A. § 4603

SYLLABUS:

A person may be a tenant of public housing and serve on a local housing authority as a commissioner, but he may not participate in the decisions in which he has a direct or indirect interest.

FACTS:

A tenant of public housing has been appointed to serve as commissioner of a local housing authority. The housing authority owns the building in which the tenant resides. The tenant pays rent to the housing authority.

QUESTION:

Is there a conflict of interest under 30 M.R.S.A. § 4603?

ANSWER:

No.

REASON:

At common law contracts in which offices or employees of a municipality have an interest are void and unenforceable. This basic general rule rests on public policy in pertinent statutes are merely declaratory of the common law and of public policy. See Tuscan v. Smith, 130 Me. 36, 153 A. 289, 73 A.L.R. 1344. 30 M.R.S.A. § 4603 follows this basic concept by stating in part:

> ". . . nor shall any commissioner knowingly acquire any interest in any real estate connected with any housing construction project. No member or commissioner of any authority shall participate in any decision on any contract or project entered into by the authority if he has any interest, direct or indirect, in any firm, partnership, or corporation, or association which may be party to such contract or financially involved in any such project. . ."

There is no question that a tenant has a lease-hold interest in the particular building in which he is residing. A lease-hold interest is any contract right giving rise to relationship of landlord and tenant. See Smith v. Royal Insurance Company, 111 F.2d 667, 671.

Interpreting the phrase ". . . nor shall any commissioner knowingly acquire any interest in any real estate connected with any housing construction project", it appears that the Legislature did not have a mere lease-hold interest in mind, but rather considered the circumstances in which a commissioner would purchase real estate for his own use and subsequently participate in contracts or negotiations from which he would receive a direct benefit.

The conflict of interest would then arise when this individual public officer places himself in a position that might tend in any way to limit his usefulness to the public by bringing his private interest into conflict with his official duties. If there is no conflict of interest, a mere employment by the municipality will not automatically make one. See Kaplan and Lillich, Municipal Conflicts of Interest: Inconsistencies and Patchwork Prohibitions, 58 Columbia Law Review, 157, (1958), Conflict of Interest and Municipal Employee, 20 Buffalo Law Review, 488. The tenant, as a commissioner, will be a public employee of the municipality. This act in and of itself is not a conflict of interest. The conflict of interest would arise in situations where the individual participated in the negotiations and decisions leading to a contract which would either directly or indirectly affect him as a tenant in the particular housing in which he resides. 30 M.R.S.A. § 4603 specifically prohibits actions of this nature declaring them to be a conflict of interest.

The intent of the legislature in allowing an individual to hold two offices, such as in the instant case, is quite clear from the language under Title 30 § 4603:

> "No member of the commissioner of any authority shall participate in any decision on any contract or project entered into by the authority if he has any interest, direct or indirect, in any firm, partnership, corporation or association which may be party to such contract or financially involved in any such project. Any such violation of this section shall constitute misconduct in office."

Here, the legislature specifically allows a person to hold two potentially incompatible offices, provided that he does not discharge the duties of one office that may affect his interest in the other, i.e., raising or lowering the rent of the building in which he resides. In accordance with the statute, he must disqualify himself from any decision which he may have interest in, or be in violation with that section.

Another factor which must be given consideration is that these housing projects are primarily federally funded and as such must conform to all federal regulations or they will be deprived of those funds. 42 U.S.C. 1401 states in part:

> ". . . it is the sense of the Congress that no person shall be barred from serving on the Board of Directors or similar governing body of local public housing agency because of his tenancy in a low rent housing project."

The Department of Housing and Urban Development has authority to mandate effective management of public housing. Congress has expressly delegated to HUD the responsibility of upgrading management in tenant service in public housing. See Public Law No. 90-448, 82 Stat. 476, 1968.

The United States Supreme Court declared in Thorpe v. Housing Authority, 393 U.S. 268 (1969) that HUD has the power to issue mandatory directives which carry the force of law, and that where such directives are issued in connection with public housing projects, they may be issued as supplements to provisions of the annual contributions contract. Thorpe further indicated that HUD's interpretation of a directive controls whether it is mandatory or merely suggestive. A HUD directives specifically confirms HUD's responsibility for housing management and community service in all HUD-Funding Housing Programs.

It is quite apparent from the foregoing that any deviation from the federal law might necessitate HUD's involvement with the local housing authority or in the alternative depriving the local authority of federal funds.

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