

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date June 13, 1973

To James E. Mitchell, Director

Dept. Maine State Housing Authority

From Charles R. Larouche, Assistant

Dept. Attorney General

Subject Maine State Housing Authority Commissioner—Conflict of Interest

SYLLABUS:

A Maine State Housing Authority Commissioner, who also had full-time occupation as Executive Director of M, a benevolent corporation, signed a contract for M corporation with B corporation to aid B to obtain Maine or other government funding, with a provision for a contingent fee to M, thereby "acquired any interest in any real estate connected with any housing construction project" in violation of 30 M.R.S.A. § 4603.

FACTS:

It appears that Mr. X was appointed as a Maine State Housing Authority Commissioner. He was then, and throughout the following factual situation, Executive Director of M corporation, which is a non-profit, church supported corporation, engaged in providing housing for the elderly. Mr. X performed the function of Executive Director of M corporation as a full-time job, for which he was compensated by an appropriate salary. Subsequently, B corporation, which is a non-profit, mortgagor corporation, was formed for the purpose of constructing, owning, operating and maintaining a low income housing project, to be funded through the Maine State Housing Authority, or other appropriate government source. Thereafter, these two corporations entered into a contract whereby M corporation agreed to provide B corporation with various, specified services in connection with the housing project, including assistance in obtaining site and feasibility approval by the Maine State Housing Authority, preparation of the mortgage insurance application, obtaining the loan, etc. In return for these services, B corporation agreed to pay to M corporation a fee based upon a specified percentage of the housing project's mortgage, which fee was to be contingent upon receipt of financial assistance. This contract was executed on behalf of M corporation by its Executive Director, Mr. X. Maine State Housing Authority Commissioner X did not participate in any vote by the Authority on any question relating to the B corporation project. No funds were ever transmitted from B corporation to M corporation in respect to this contract, for the reason that B corporation was unsuccessful in obtaining funding for its project.

QUESTION:

Did Commissioner X's conduct violate 30 M.R.S.A. § 4603, which prohibits certain actions in conflict of interest?

ANSWER:

Yes.

REASONS:

30 M.R.S.A. § 4603 provides:

"During his tenure and for one year thereafter, neither the executive director nor any employee of any authority shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, of that housing authority, or in any contract or proposed contract relating to any such project, 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 and 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 violation of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in notes or bonds of the authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services, the rates for which are fixed or controlled by a governmental agency."

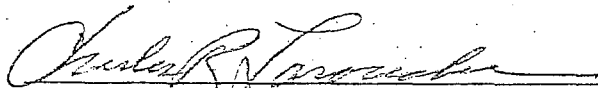
It appears from the foregoing statute that the function of the first sentence is to prohibit the knowing acquisition of any interest in any real estate connected with any housing authority project. The function of the second sentence is to prohibit participation in any decision by the Authority when he has an interest in that project. While it does seem that Mr. X did not violate the second sentence of Section 4603, it, nevertheless, appears that he did violate the first sentence of that section, for the following reasons.

Neither M corporation nor Mr. X acquired, through these contracts, a technical "interest" in land as that term is used in the law relating to real property. However, the statute prohibits acquisition of "any interest in any real estate connected with any housing construction project." The word "any" is all-encompassing. The apparent purpose of the statute is to enhance the integrity of the Authority's decisions and the public confidence therein as well as to preserve the utility

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of the Commissioner on the Authority. This clear, over-riding legislative objective militates against an intent to use the word "interest" in a narrow, technical sense. Accordingly, it is clear that the phrase "any interest" as used in this statute is not limited to the sense in which it is used in real property law, but, that it also includes any pecuniary interest in such land.

It may be said that this fee was not going to the Executive Director, but, instead to M corporation which, moreover, was "nonprofit." Nevertheless, M corporation and Mr. X were both interested in compensation for these services, apparently in order to assure the continued operation of M corporation and the continued compensation of Mr. X. Therefore, it must be concluded that Mr. X knowingly acquired a pecuniary interest in real estate connected with a housing construction project. (Compare Tuscan v. Smith, 130 Me. 36; Lesieur v. Inhabitants of Rumford, 113 Me. 317, and In re Opinion of the Justices, 108 Me. 545) which acquisition violated 30 M.R.S.A. § 4603.



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