

MAINE STATE LEGISLATURE

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Clarification of Conflict of Interest Rulings

SYLLABUS:

A part-time employee of the State Planning Office, employed on a special coastal district planning project, may not do planning for a private developer on a subdivision located outside the coastal district without creating a conflict of interest.

FACTS:

An employee of the State Planning office employed in the Coastal Planning Group on a special project basis to work on the socio-economic section of the coastal plan is also desirous of planning a subdivision, for a private developer, of property located outside of the coastal district.

QUESTION:

Whether an employee of the State Planning Office, employed on a special coastal district planning project, may do planning for a private developer on a subdivision located outside the coastal district without creating a conflict of interest.

ANSWER:

No

REASONS:

Maine has adopted the following rule regarding incompatibility of offices:

"Incompatibility arises where the nature and duties of the two [positions] are such as to render it improper, from considerations of public policy, for one person to retain both. Incompatibility between two offices exists when there is an inconsistency in the functions of the two. The functions of the two must be inconsistent, as when an antagonism would result in

"the attempt by one person to discharge the duties of both offices. ... [T]he true test is whether the two offices are incompatible in their nature, in the rights, duties or obligations connected with or flowing out of them." See Howard v. Harrington and Duncan v. Kapp, 114 Mo. 443 (1916).

Here, considerations of public policy arising from the nature and duties of the two positions render it improper for one person to retain both positions. 5 M.R.S.A. § 3305 sets out the powers and duties of the State Planning Office. Under subsections f and g (1) of section 3305, the State Planning Office is given the duty to assist and advise municipalities, etc., in planning and executing any public or private project and is charged with the responsibility of reviewing any such proposal in light of its relationship to the State Comprehensive Plan.

A person's interest in planning a subdivision outside the coastal district for a private developer is incompatible with nature, rights, duties and obligations incident to his employment with the State Planning Office. Although that person is employed in the coastal planning group of the State Planning Office and his interest in planning a subdivision for a private developer involves land use planning outside of the coastal district, his state office, i.e., the State Planning Office, is charged with the duty to assist municipalities in local planning and land use control. Hence, any planning done privately that affects the State Comprehensive Plan would require State Planning Office approval and such approval, in essence, would intermingle the rights, duties and obligations of even those persons employed as a part-time State planner and as a part-time private planner, creating an irreconcilable incompatibility.

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cc: Robert D. Elder, Planner
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