

MAINE STATE LEGISLATURE

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March 5, 1974

Honorable Glenys W. Berry
House of Representatives
State House
Augusta, Maine

Dear Representative Berry:

You have asked three questions relating to conflict of interests. The fact situation on which your questions are based is as follows:

A man is a member of the Board of Directors of a School Administrative District. He does, at times, act as a substitute teacher. In all probability, he may substitute 10 to 12 days during the year. The wife is also a substitute teacher in the same District. No information is given as to the number of substitute days. You have asked three questions on this matter.

1. May the man who is a member of the Board of School Directors of the School Administrative District be a substitute teacher in the schools within the District?

The proper answer appears to be that additional legislation is required for a positive answer to the question. According to the present status of legislation, the likely answer is in the negative.

The statute on the subject is as follows:

"No member of the board of school directors or spouse shall be employed as a full-time employee in any public school that comes within the jurisdiction of the board of directors of which he is a member." 20
M.R.S.A. § 302.

We base our answer on the case of Lesieur v. Rumford, 113 Me. 317 (1915). In that case Dr. Lesieur was one of three

members of the board of health of Rumford. The board contracted with Dr. Lesieur to handle a case of smallpox of a local resident. The doctor sued for his services. The Court said:

"It is well established as a general rule that one acting in a fiduciary relation to others is required to exercise perfect fidelity to his trust, and the law, to prevent the neglect of such fidelity, and to guard against any temptation to serve his own interests to the prejudice of his principal's disables him from making any contract with himself binding on his principal. The invalidity of a contract entered into in violation of this rule does not necessarily depend upon whether the fiduciary intended to obtain an advantage to himself, but rather upon whether it affords him the opportunity, and subjects him to the temptation, to obtain such advantage. The test is not whether harm to the public welfare has in fact resulted from the contract, but whether its tendency is that such harm will result.

"Applying this rule to the contract declared on, and testing it by those principles which constitute public policy as recognized by the common law, and as evidenced by the trend of legislation and judicial decisions, we are constrained to hold that the contract does so far contravene public policy that it ought not to be upheld and enforced through the administration of the law."

Thus, by the common law, a member of the Board of Directors of a School Administrative District could not legally be employed by the Board.

Your second question reads as follows: "May the spouse of a member of the Board of Directors of a School Administrative District be a substitute teacher in the District?"

A spouse of a member of the Board of Directors of a School Administrative District is not under the same common law prohibition as the member of the Board. So, under common law, no conflict would exist. The Legislature has seen fit to state that a spouse may not be a "full-time employee." The Legislature has not treated the question of the spouse who is a "part-time employee."

You have called to my attention Title 30, § 2251, sub-§ 1, as amended by Public Laws 1973, Chapter 445, which provides that certain proceedings of municipal officials are void and actionable in certain instances. One is that the vote of any official of a municipality in his official position in which he has a direct or indirect pecuniary interest is void. This provision does not apply to the factual situation which you have presented me. Title 30, § 1901, sub-§ 8, defines a municipal official as "any elected or appointed member of a municipal government." A member of the Board of Directors of a School Administrative District is not a "member of a municipal government." Hence, this section does not apply to your factual problem.

Very truly yours,

JON A. LUND
Attorney General

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JWB