

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 17, 1974

To Philip M. Savage, Director

Dept. State Planning Office

From Edward Lee Rogers, Assistant

Dept. Attorney General

Subject Conflict of Interest -- LURC member as a temporary SPO employee

The question you have asked in your memorandum dated September 27, 1974, is whether the State Planning Office (SPO) may hire a public member of the Land Use Regulation Commission (LURC) on a part-time basis to do research without giving rise to valid conflict of interest charges. In particular, SPO is considering the hiring of Esther Lacognata, a public member of LURC to do research on a part-time basis from October 15, 1974 through January 1, 1975.

It is our position that Mrs. Lacognata should not be hired for this position for two related reasons.

1. First, 12 M.R.S.A. §683, as revised by Chapter 698 of the laws of 1973 (1974 Special Session) refers to "six public members [of LURC], none of whom shall be state employees." We have concluded that this statute establishes as legislative policy that LURC members should not normally be state employees for any purposes. Because of LURC's broad and diverse jurisdiction over many matters, it is difficult to predict precisely where and when a state agency's activities and positions might become relevant in a LURC proceeding. Therefore, the Legislature, in its wisdom, has imposed a blanket prohibition -- regardless of whether on any particular set of facts a conflict of interest is likely it has simply stated that none of the members of LURC shall be state employees. You have suggested in your inquiry no facts which would make that legislative mandate and the policies behind it inapplicable here.

2. Moreover, despite the short period of employment contemplated, an actual conflict of interest could arise on the facts given. Among SPO's duties under 5 M.R.S.A. §3305 are preparation of plans for the physical development of the state; assistance in planning to local and regional governments and inter-governmental groups; and coordination and review of "the several officers, authorities, boards, commissions, departments and divisions of the State." In contrast to this coordinating and therefore even-handed objectivity required of SPO, LURC is charged with preserving "ecological and natural values" in developing and enforcing land use plans and classifications. Because LURC is not entirely neutral (albeit no planning agency could be expected to be entirely neutral) and because SPO must "review" LURC's "proposals in light of their relationship to the comprehensive plan and incorporate such reviews in the reports of the office," 5 M.R.S.A. §3305, (1) (G), a substantial issue of incompatibility would arise if a LURC member were to undertake research for SPO. Even if SPO is not

planning to conduct any review of LURC's activities or proposals during the projected period of the research project, which would obviously give rise to an actual conflict of interest, there is always the possibility that any future review of LURC's proposals would be influenced to some extent by the research conducted.

We recognize that SPO's review functions under 5 M.R.S.A. §3305 are advisory and in no way restrict the power or authority of any agency. Nevertheless, that review function is an important one and in no way should it be made subject to any type of challenge that it was biased towards any particular agency or agency viewpoint.

The problem here is perhaps further aggravated by Mrs. Lacognata's prior employment by LURC as a consultant. Her retention by SPO might be considered as part of a pattern of intermittent or relatively continuous state employment, albeit on a contract-by-contract basis.

For the reasons stated above, then, we conclude that Mrs. Lacognata should not be hired by SPO as a consultant. At the same time, however, we wish to emphasize that this opinion must be limited to its facts. Circumstances may arise where a firm or corporation in which a LURC member has an interest is, for example, the successful competitive bidder for a state contract. Whether or not such a situation would bring into play the prohibition against state employment in 12 M.R.S.A. § 683 or give rise to other incompatibility problems would have to be decided on the particular facts there involved.

We also wish to call to your attention our formal opinion to you dated January 8, 1974, entitled "Clarification of Conflict of Interest Rulings."



EDWARD LEE ROGERS
Assistant Attorney General