

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

March 11, 1975

Berton K. Braley, Mayor
City Hall
Saco, Maine

Dear Mayor Braley:

This is a response to your question whether a builder or developer could serve on a city or town planning board. Your question was submitted together with copies of the City's ordinance establishing the Planning Board. The ordinance material you submitted contains no language prohibiting a builder or developer from serving on the City's Planning Board.

Amendment 1 to the ordinance establishing the Planning Board of the City of Saco specifies in paragraph E that (1) only residents of Saco may serve as a member or associate member of the Planning Board; (2) there shall be no more than 2 members on the Board who are residents of the same ward; and (3) no more than one profession or occupation shall be represented on the Board at any one time.

Yesterday, I had a telephone conversation with City Clerk Joan M. LaMontagne regarding the question posed by your Office. In that telephone conversation, I noted that general provisions in Title 30 related to the subject of conflicts of interest respecting proceedings of municipalities. The particular statute I had in mind was 30 M.R.S.A. § 2251. I enclose a copy of that statute for your easy reference. Paragraph 1 of § 2251 specifies that the vote of a body is voidable when any official in his official position votes on any question in which he has a direct or an indirect pecuniary interest. Paragraph 4 of the same section provides,

"Where an official is deemed to have a direct or indirect pecuniary interest, the vote on the question or the contract shall not be voidable and actionable if the official makes full disclosure of his interest prior to any action being taken and if he abstains from voting, from the negotiation or award of the contract, and from otherwise attempting to influence a decision in which he has an interest. The official's disclosure and a notice of his abstention from taking part in a decision in which he has an interest shall be recorded with the clerk or secretary of the municipal or county government or the quasi-municipal corporation."

In the event that a builder or subdivider is named to a municipal planning board, attention should be given to the provision appearing in 30 M.R.S.A. § 4956, sub-§ 3, ¶ K, which specifies that the planning board, when reviewing any subdivision for approval, shall consider whether the subdivider has adequate financial and technical capacity to meet the several standards appearing in sub-§ 3 of § 4956. A determination of that question would, of course, be a matter on which the subdivider-member should refrain from voting.

The answer to your question depends on the facts of each case. Membership per se of a subdivider or builder on a municipal planning board does not result in a conflict of interest. However, a conflict of interest is created whenever the subdivider or developer is confronted with a question in which he has a direct or indirect pecuniary interest.

Very truly yours,



JOHN W. BENOIT, JR.
Deputy Attorney General

JWB Jr./ec
Enclosure

cc: Senator Peter W. Danton