

MAINE STATE LEGISLATURE

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March 26, 1975

John B. Leet
Executive Director
Maine Law Enforcement Planning
& Assistance Agency
295 Water Street
Augusta, Maine 04330

Dear Mr. Leet:

This is in response to your March 11 request for an opinion on the propriety of a director of the Maine Law Enforcement Planning & Assistance Agency serving as a paid consultant to the recipient of a MLEPAA grant. In the case with which you are immediately concerned it appears that funds from your grant would not be used to pay for these consulting services.

Maine law does not preclude a director of MLEPAA from contracting with, or being employed by, the recipient of one of its grants as such. I note, however, that LEAA regulations appear to prohibit any person with a financial interest in the use of LEAA funds from participating in any decision on the grant involved, and enjoins your directors not to take action that might create the appearance of using an official position for private gain or giving preferential treatment to any person, among other things. I assume this regulation is the reason why it was thought desirable not to use LEAA funds to pay for the services of a consultant who sits on your board of directors. I think the decision was sound. Of course, when the proceeds of different grants are interchangeable in the hands of the grantee it may not make much difference, practical or legal, whether the particular funds used to pay a consultant are from one of your grants or some other source.

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The "comprehensive services for the criminal justice system" project, has a further complication. Section 3104 of Title 17, M.R.S.A., provides, in pertinent part, "no...person holding a place of trust in any State office...shall be pecuniarily interested directly or indirectly in any contracts made on behalf of the State ...". MLEPAA directors are persons holding such a place of trust. As we understand it, the Department of Mental Health and Corrections is the subgrantee responsible for carrying out the comprehensive services project, and thus presumably any contracts for consulting services would be contracts with the State.

We understand that the Department has entered into an agreement with a private not-for-profit corporation, the Kennebec Valley Mental Health Center, under which that organization hires project personnel and makes their services available to the Department to carry out the project. This was thought to be necessary to overcome certain problems raised by the State's Personnel Law and Regulations. We also understand, however, that the Kennebec Valley Mental Health Center has no responsibility for carrying out the project, that it does not and could not supervise the activities of project personnel and that final authority for such decisions as the choice of consultants rests with the Department of Mental Health and Corrections.

Under these circumstances, we believe a contract for consulting services would be a contract in behalf of the State as those terms are used in § 3104, whether the check to pay the consultant's fee came from Kennebec Valley or the State Treasurer. As a result, no member of your board of directors could be pecuniarily interested.

Sincerely,

Joseph E. Brennan
Attorney General

JEB/sjn