

# MAINE STATE LEGISLATURE

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*Conflict of Interest State Offices*

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November 4, 1975

Honorable Carl E. Cianchette  
Chairman, Executive Council  
State House  
Augusta, Maine 04333

Dear Carl:

This is in response to your request for an opinion whether Mr. Aaron Levine would be in conflict of interest serving as Commissioner of the Maine State Department of Agriculture if he continued to own stock in ALCO Packing Co., Inc.:

SYLLABUS:

A conflict of interest in violation of law would result if the controlling stockholder of the largest slaughterhouse and meatpacking concern in Maine simultaneously held the position of Commissioner of the State Department of Agriculture. The relationship of the controlling stockholder to his company would be inconsistent with the obligations and duties imposed upon the Commissioner of the Department of Agriculture.

FACTS:

The Governor has posted Mr. Aaron Levine to the position of Commissioner of the State Department of Agriculture. Mr. Levine is President and Chief Executive Officer of ALCO Packing Co., Inc., a corporation duly organized under the laws of Maine, engaged in the slaughterhouse and meatpacking business. Mr. Levine owns 79% of the voting stock of ALCO and serves on its Board of Directors.

ALCO is the largest meatpacking company in Maine. It is presently inspected solely by federal inspectors, and is engaged in interstate as well as intrastate commerce. There are several other slaughterhouses and meatpacking concerns in Maine engaged

solely in intrastate commerce which are inspected solely by state inspectors appointed by and acting under the supervision of the Commissioner of the State Department of Agriculture, pursuant to the Maine Meat Inspection Act, 22 M.R.S.A. §§ 2541-2589.

If confirmed by the Executive Council as Commissioner, Mr. Levine has indicated that he is prepared to resign as President and Director of ALCO and would disassociate himself from all the affairs of the company. He would not receive any salary from ALCO and would not be available for consultation with the company. Mr. Levine would prefer to retain his 79% ownership interest in ALCO while he serves as Commissioner of Agriculture.

At the public hearing before the Executive Council, there was testimony in opposition to Mr. Levine's appointment on the grounds that the appointment would result in a conflict of interest because of the nominee's proposed continued relationship to ALCO. The Executive Council has requested our opinion whether any conflict of interest would result under the foregoing facts.\*

QUESTION AND ANSWER:

Whether Mr. Levine's retention of a 79% ownership interest in ALCO Packing Co. while serving as Commissioner of the Maine Department of Agriculture would constitute a conflict of interest? Yes.

REASONS:

In order to resolve conflict of interest questions, the Courts have looked to the common law. The criteria to be applied in such cases have been succinctly summarized in a recent conflict of interest Opinion of the Justices as follows (330 A.2d 912 at 916):

"[t]he law requires of . . . [public officers] perfect fidelity in the exercise of . . . [the powers and duties of their officer], . . . whatever has a tendency to prevent their exercise of such fidelity is contrary to the policy of the law, and should not be recognized as lawful. . . .' (emphasis supplied) (113 Me. p. 321, 93 A. p. 829)."

In the foregoing Opinion, the Justices addressed a question very similar to the instant one, namely: whether the ownership of stock in a national bank by a person who simultaneously serves as Commissioner

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\* The facts were voluntarily furnished relating to the nominee's ownership interest in ALCO by Mr. Levine himself. There is no indication that ALCO would be doing any business directly with the State.

of the State Department of Finance and Administration results in a conflict of interest. It was the opinion of the Justices that such continued stock ownership, even if subjugated to a voting trust by the terms of which the prospective Commissioner would have no beneficial or voting rights while in state service, would constitute a conflict of interest in violation of law. Opinion of the Justices, 330 A.2d 912, 919.

Applying these principles to the instant case, it is our opinion that Mr. Levine's continued stock ownership, according to acknowledged attitudes fixed by the habits and customs of the people, would be held to be "inconsistent with the discharge of a full fidelity to the public interest," as Commissioner of Agriculture. Opinion of the Justices, 330 A.2d at 918; Tuscan v. Smith, 130 Me. 36, 46, 153 A. 289, 294 (1931); Lesieur v. Inhabitants of Rumford, 113 Me. 317, 321, 93 A. 838, 839 (1915).

The conflicts fall into essentially three categories: (1) regulation of competitors, (2) regulation of the corporation which he controls, and (3) regulation of persons with whom both his corporation and his competitors do business.

#### Regulation of Competitors

The Commissioner of Agriculture, and those officials appointed by him and who are subject to his control, possess plenary power and supervision over those establishments engaged in the slaughterhouse and meatpacking business in intrastate commerce. The Commissioner has the statutory responsibility for administering and promulgating rules and regulations under the Maine Meat Inspection Act, 22 M.R.S.A. §§ 2541-2589 (a copy of which is annexed hereto for convenient reference). Pursuant to the Act, the Commissioner has express powers and duties in the following areas:

- a) inspection and examination, §§ 2543, 2544, 2545, 2546, 2549, 2553 (such examinations and inspections shall be made during the day and night, § 2549);
- b) labeling, §§ 2547, 2551;
- c) sanitation, § 2548;
- d) identification, § 2552;
- e) methods of slaughter, § 2554;

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- f) days for slaughter or operation, § 2549;
- g) storage, § 2557;
- h) handling, § 2557;
- i) record keeping, § 2562;
- j) registration, § 2563;
- k) federal inspection, § 2571;
- l) detention, § 2582; and
- m) condemnation, § 2583.

State inspectors are appointed by the Commissioner, § 2553. Their duties and responsibilities are, by statute, under the direction of Commissioner as follows:

"[They] shall perform such other duties as are provided by this chapter and by rules and regulations to be prescribed by said commissioner and said commissioner shall, from time to time, make such rules and regulations as are necessary for the efficient execution of this chapter, and all inspections and examinations made under this chapter shall be such and made in such manner as described in the rules and regulations prescribed by said commissioner not inconsistent with this chapter." § 2553.

Slaughterhouse and meatpacking establishments regulated by the Commissioner are required to "keep such records as will fully and correctly disclose all transactions involved in their businesses," § 2562(1), and the Commissioner has express authority:

- a) to gather any information covering, and to investigate, "the organization, business, conduct, practices and management of any person, firm or corporation engaged in intrastate commerce, and the relation thereof to other persons, firms and corporations." § 2587(1)(A),

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- b) to require those engaged in the meatpacking business to furnish "such information as he may require as to the organization, business, conduct, practices, management and relation to other persons, firms and corporations. . ." § 2587(1)(B),
- c) to have access to and the right to copy "any documentary evidence of any person, firm or corporation being investigated or proceeded against. . ." § 2587(2),
- d) "to subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm or corporation relating to any matter under investigation." § 2587(2).

Pursuant to § 2571 of the Maine Meat Inspection Act, those businesses which are regulated by the State must meet standards and requirements "at least equal to those imposed under Titles I and IV of the Federal Meat Inspection Act. . . ." § 2571.

The State Commissioner of Agriculture has promulgated regulations which incorporate the federal regulations and make them applicable to slaughterhouses and meatpacking concerns regulated by the State. Thus, although the requirements for federally inspected establishments such as ALCO and State inspected establishments are presently the same, the Commissioner of Agriculture has authority to promulgate more stringent requirements for state regulated concerns.

It is clear from the foregoing that Mr. Levine would have direct supervisory and comprehensive regulatory power over competitor slaughterhouse and meatpacking concerns as well as access to their detailed business records and every day transactions.

#### Regulation of ALCO

At the present time, ALCO itself is neither inspected nor regulated by the Commissioner of Agriculture or his appointed inspectors. Rather, ALCO is regulated by federal authorities. Nevertheless, the Maine Meat Inspection Act expressly provides that the requirements of the Act may be applied to federally inspected establishments in certain areas:

"[the Act] shall apply to persons, firms, corporations, establishments, animals and articles regulated under the Federal Meat Inspection Act only to the extent provided in section 408 [21 U.S.C. § 678] of said Federal Act." 22 M.R.S.A. § 2588.

The Federal Act authorizes any state to "impose recordkeeping and other requirements. . .with respect to any such [federally inspected] establishment, and to exercise:

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"concurrent jurisdiction with the Secretary [of Agriculture] over articles required to be inspected . . . for the purpose of preventing the distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment, or, in the case of imported articles which are not at such an establishment, after their entry into the United States." 21 U.S.C. § 678.

By virtue of the foregoing provision, if Mr. Levine were to continue to own a 79% controlling interest in ALCO while he served as Commissioner of the State Department of Agriculture, he would, in effect, be in the position of regulating a corporation in which he owns the controlling interest.

In addition, the Commissioner of Agriculture administers a disease control program which applies to cattle slaughtered at federally inspected as well as state inspected slaughterhouses, including ALCO. 7 M.R.S.A. Chap. 303, § 1751, et seq.

Regulation of Persons With  
Whom Both ALCO and its  
Competitors Do Business

In addition to the duties imposed by the Maine Meat Inspection Act, the Commissioner of Agriculture regulates and licenses dealers of livestock and poultry, 7 M.R.S.A. §§ 1301-1308, and is authorized to promulgate rules and regulations with respect thereto, 7 M.R.S.A. § 1303. Pursuant to 7 M.R.S.A. § 1809, the Commissioner may require any person seeking to transport cattle into the state to obtain a permit prior to time of entry, and he may require examinations at the owner's expense. Accordingly, the Commissioner of Agriculture does possess statutory powers, the exercise of which could have a significant impact on those persons who raise or import beef cattle and who, in turn, may sell the same to ALCO for slaughter or packaging.

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In summary, because ALCO is at least in some manner in competition with state inspected establishments, since it sells its products in intra-state as well as interstate commerce, any exercise of regulatory power with respect to state inspected concerns, or for that matter, failure to exercise regulatory power, would be particularly subject to public question.

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Moreover, as a 79% controlling stockholder, he would have a direct pecuniary interest and personal stake in the continuing good fortunes of ALCO, Opinion of the Justices, 330 A.2d at 918. And, he would have authority to regulate the largest slaughterhouse and meatpacking establishment in Maine, a company in which he owns the controlling interest. These interests would be inconsistent with high obligations of trust and "perfect fidelity" which the Commissioner of Agriculture owes the public in the discharge of his statutory responsibilities. Tuscan v. Smith, supra; Lesieur v. Inhabitants of Rumford, supra.

Very truly yours,

  
JOSEPH E. BRENNAN  
Attorney General

JFB:mfe  
Enclosure