

MAINE STATE LEGISLATURE

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November 18, 1975

Honorable John W. Jensen
Box 943
Portland, Maine 04102

Dear John:

Some time ago you and John Benoit discussed a question of a conflict of interest where a member of the State Personnel Board is at the same time the owner of a nursing home. You and I have also discussed it briefly, and you have asked me to express my thoughts in writing.

There is no constitutional or statutory incompatibility here and I see no apparent factual conflict of interest.

The powers and duties of the Personnel Board are provided in 5 M.R.S.A. § 592. Primarily, the Board is concerned with prescribing or amending rules and regulations relative to the various aspects of the personnel law, which are promulgated only upon recommendation of the Personnel Director, and through him with enforcing the laws and the rules and regulations made thereunder. The Board's power to handle cases of dismissals from the classified service was repealed in 1973, and the power given to the State Employees Appeals Board as provided in 5 M.R.S.A. C. 63, so that it is the Director and the Appeals Board, and not the Personnel Board, which handles matters concerning individual employees.

On the other side of the coin, it is the Department of Health and Welfare which licenses and inspects nursing homes in accordance with the provisions of 22 M.R.S.A. c. 405, and the rules and regulations in force pursuant thereto.

The Personnel Board is concerned only with State Employees, whereas the owner and employees of a nursing home are private employees not subject to State Personnel laws or rules.

I enclose a copy of the applicable laws.

Very truly yours,

LWWJr/mf

Leon V. Walker, Jr.
Assistant Attorney General