

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

# STATE OF MAINE

Inter-Departmental Memorandum Date December 5, 1975

To Philip G. Clifford, 2nd, Manager Dept. Maine Guarantee Authority  
cc. Martin L. Wilk, Deputy Dept. Attorney General  
Subject \_\_\_\_\_

This will respond to your memo dated November 10, 1975, inquiring whether 5 M.R.S.A. § 15, which disqualifies former State employees from participation in certain matters against the State, applies to members of the Maine Guarantee Authority. For the reasons which follow, it is our opinion that the statute does not apply to members of the Authority.

5 M.R.S.A. § 15 prohibits "any person who has been a member of the classified or unclassified service employed by an Executive agency. . . ." from engaging in certain activities against the State after such person leaves State service. From this language it is clear that, broadly speaking, the section only applies when two elements are present, namely: (1) a person must have been a member of the classified or unclassified service, and (2) that person must have been employed by an Executive agency of State Government. Members of the Maine Guarantee Authority are not in the classified service.

5 M.R.S.A. § 711(3) provides that the unclassified service comprises positions held by "officers and employees" who are "heads of departments and members of boards and commissions required by law to be appointed by the Governor with the advice and consent of the Council. . . ." Since members of the Maine Guarantee Authority arguably are "officers" of a board required by law to be appointed by the Governor with the advice and consent of the Council, 10 M.R.S.A. § 751, such persons may well be considered within the unclassified service. If, on the other hand, such persons are not "officers or employees" within the meaning of 5 M.R.S.A. § 711 and are not in the unclassified service, the statute in question would not apply.

Assuming, arguendo, that the members of the MGA are within the unclassified service, we must consider whether they are employed by an Executive agency within the meaning of 5 M.R.S.A. § 15. In our opinion, such persons cannot properly be considered employed by the MGA. Members of the MGA constitute the governing body of the Authority, 10 M.R.S.A. § 751, and have power to appoint employees, who work at their direction, 10 M.R.S.A. § 751(C), (G). The members do not receive a regular salary and are not subject to supervision by other officials. Within statutory limitations they have complete policy and decision making authority within a quasi-independent "body corporate" which is an instrumentality of the State. Such persons are not employed by an Executive agency within the meaning of 5 M.R.S.A. § 15.

Philip G. Clifford, 2nd.

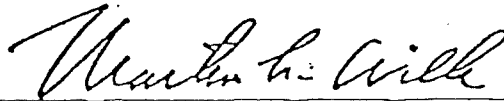
Page 2

December 5, 1975

It should be noted that the statute refers to an "Executive agency." Because the MGA is an instrumentality of the State having its own corporate existence, it is further arguable that the MGA is not an "Executive agency" within the meaning of 5 M.R.S.A. § 15. See Maine State Housing Authority v. Depositors Trust Co., 278 A.2d 699, 707 (1971).

Finally, 5 M.R.S.A. § 15 is a criminal statute and therefore should be narrowly construed.

For all of the foregoing reasons, we conclude that 5 M.R.S.A. § 15 does not apply to members of the Maine Guarantee Authority. We do not express any opinion on the applicability of the statute to other persons associated with the MGA or to the members of any other board or commission.



MARTIN L. WILK  
Deputy Attorney General

MIW/ec