

# MAINE STATE LEGISLATURE

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*Insurance Accountants Conflict of Interest*

24-A.M.R.S.A. § 209

STATE OF MAINE

Inter-Departmental Memorandum Date August 18, 1976

Frank Hogerty, Superintendent

Dept. Bureau of Insurance

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject CPA Firm Re Union Mutual Life Insurance Examination

This responds to your memorandum of August 16, 1976, in which you request a written opinion to confirm the views expressed to you by Kirk Studstrup and by me through Kirk Studstrup that the Insurance Superintendent may not contract with an accounting firm which does business with a particular insurance company to do the Insurance Superintendent's independent examination of that company, as such would place the accountant as the representative of the Bureau in a position of conflict of interest.

FACTS:

Union Mutual Life Insurance Company has appointed the accounting firm of Ernst and Ernst as its independent outside auditors. The Bureau of Insurance is now planning to conduct an examination of Union Mutual Life Insurance Company pursuant to the provisions of 24-A M.R.S.A. § 221, et seq. Ernst and Ernst is one of the accounting firms which has submitted a bid to provide the Bureau of Insurance with accounting services in connection with this examination.

QUESTION AND ANSWER:

May an independent outside auditor for an insurance company also contract with the Bureau of Insurance to provide the Bureau of Insurance accounting services in connection with an examination of that same insurance company? The answer is no..

DISCUSSION:

The statute relating to independent examinations, 24-A. M.R.S.A. § 221, et seq., clearly contemplates that these examinations be conducted independently from the insurance company. Similarly, 24-A. M.R.S.A. § 209 specifies certain conflicts of interest which are to be avoided in administering the insurance program. Additionally, there is a general common law doctrine of conflict of interest which all state regulatory agencies must follow. In this case, there appears to be a conflict between the interest represented by Ernst and Ernst as an accountant for the insurance company and the interest which Ernst and Ernst seeks to achieve as accountant for the Bureau of Insurance in their independent audit of the insurance company. While there is no implication

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that Ernst and Ernst as independent accountants will compromise that independence to favor one interest or the other, even the appearance or possibility of compromise of interest is sufficient to create a prohibited conflict of interest although no facts indicate an actual compromise of interest.

In this case, Ernst and Ernst as accountants for the Bureau of Insurance will be placed in a position of reviewing their work as accountants for the company. If one audit disclosed problems with the other, there might be legitimate concern that there would be less incentive to identify any such problems if both audits were conducted by the same party.

The clear intent of the examination provisions of the law is that an independent examination be conducted. This concept clearly would not be achieved if the "independent" examination was conducted in whole or in part by the company's own auditor. To read it otherwise would mean that, basically, the single independent audit conducted on the part of the company could be all that was needed, for it should be expected that in many cases, if bidding on examinations by company auditors were allowed, the company auditors would be the low bidder because of their greater familiarity with company practices. The law did not intend that the company auditor also become the examination auditor.

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DONALD G. ALEXANDER  
Deputy Attorney General

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