

MAINE STATE LEGISLATURE

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September 22, 1976

Honorable John L. Martin
Speaker of the House
State House
Augusta, Maine 04333

Re: Question regarding Municipal Conflict of Interest Law

Dear Mr. Speaker:

This responds to your oral request for an opinion communicated to this office on September 15, 1976.

Basically the facts of the matter are these:

A person entered into a contract with a municipality to plow roads. The contract was signed in 1974. The contract is for a period of five years and is still in effect. Subsequently, in 1975, the person with the contract to plow roads was elected a selectman of the municipality.

Based on these facts you posed the following question:

Is the road plowing contract in question void because it is held by a current selectman of the municipality, where that contract was entered into prior to the time when the contractor became a selectman?

The answer is that the contract in question based on the facts indicated above, is not void.

Discussion:

The question posed requires examination of the provisions of 30 M.R.S.A. § 2251, otherwise known as the municipal conflict of interest law. That section provides in pertinent part:


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"A contract, other than a contract obtained through properly advertised bid procedures, made by a municipality, county or quasi-municipal corporation during the term of an official of a body of the municipality, county or quasi-municipal corporation involved in the negotiation or award of the contract who has a direct or an indirect pecuniary interest in it is voidable, except as provided in sub-section 4."
30 M.R.S.A. § 2251-2.

This provision of law explicitly limits those contracts which are voidable to those made "during the term of an official of a body of the municipality." In this instance, the facts indicate that the contract was entered into prior to the commencement of the term of the official in question, therefore, the contract is not affected by the municipal conflict of interest law.

We would add one reservation, this opinion should not be construed to address the question of the appropriateness of the municipal official in question voting on any changes to or amendments of the contract which may be proposed. Such matters would have to be addressed by the appropriate municipal official and town counsel on a case by case basis according to the facts, if any such amendments are proposed.

Sincerely,


DONALD G. ALEXANDER
Deputy Attorney General

DGA:jg