

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date November 29, 1976

To Commission on Governmental Ethics
and Election Practices

Dept. _____

From Donald G. Alexander, Deputy

Dept. Attorney General

Subject Commission Member Relationships to Candidates

At the October 6, 1976, meeting of the Commission on Governmental Ethics and Election Practices, four questions relating to potential Commissioner conflicts were posed to the Attorney General's Office for resolution. These four questions are:

1. May Commission members make contributions to candidates or causes?
2. If the Commission member makes a contribution to a candidate or cause, what should that Commissioner do when a campaign spending report involving that candidate or cause comes before the Commission?
3. What should a Commission member do regarding other Commission actions (e.g., recount appeals) involving a candidate or cause to which contributions have been made?
4. Are the above matters personal matters for each Commission member to decide or matters of law?

Analysis of these questions will be provided with the additional background of an assumption that the Commissioner's relationship with the candidate through the contribution would be one of an incidental nature. That is, (1) the contribution would not be excessively large (e.g., \$100 or more) so that, in relation to other contributions, the Commissioner was not in the class of a major contributor or major financial backer of a candidate or a cause, and (2) beyond the incidental contribution and voting for the candidate, the Commissioner in question has no other relationship with the candidate or involvement in the candidate's campaign so that the Commissioner, by being a campaign treasurer, for example, would become one of the persons directly responsible to and directly regulated by the Commission.

In addition, as a background for the answers, it must be recognized that fairly specific qualifications are set for Commission members. Thus, 1 M.R.S.A. § 1002-2 provides that:

"The members of the Commission will be persons of recognized judgment, probity and objectivity."

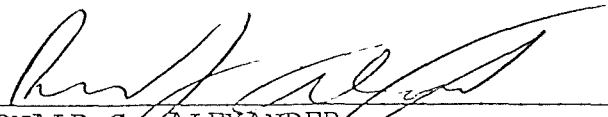
In addition, persons who are members of the Legislature or who are or have been candidates for office within two years prior to appointment are ineligible for Commission membership.

Thus, the Legislature has clearly stated their intent that the Commission be objective and be above at least immediate participation in politics. With these assumptions and background, the questions are answered as follows:

1. (Contributions) This is not a conflict question in the traditional sense as the Commissioner stands to reap no financial gains. Common law doctrines relating to conflict of interest generally focus on financial conflict of interest. Further, there is no specific statute which would prohibit a Commission member from contributing to a candidate or a cause. Therefore, there would be no apparent conflict of interest under the common law or statute in a Commission member making such a contribution, again assuming the incidental relationship discussed above.

2, 3 and 4. (Appropriate Commissioner Action) As there is no statutory or common law prohibition of contributions which create a de jure conflict of interest for Commission members, the Commission member involved must examine each situation on a case-by-case basis and reach a personal determination as to whether the Commission member's objectivity in viewing the fact situation may be clouded by having made a contribution. Further, in examining questions of objectivity, it must be emphasized that, among persons of good will, the greatest objectivity problem may not be that the Commission member in question would be particularly lenient, but rather that in trying to avoid any implication of favoritism, the Commission member may view the candidate in question's case particularly harshly. Thus it is important to consider whether the contribution may effect objectivity either toward more leniency or toward a harsher view of the matter.

These matters are, however, particularly within the individual knowledge and judgment of each member of the Commission. There are very few precedents to guide one on the question of when recusal from consideration of a particular matter is proper for an individual. Each fact situation must be judged on its own. It should also be noted that assistance may be provided to candidates in forms other than contributions. Such assistance should be subject to the same considerations as discussed above.



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