

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 23, 1977

Honorable Judy Kany
House of Representatives
State House
Augusta, Maine

Re: L.D. 1795; AN ACT Relating to Legislative Review of
Conflicts of Interest in Appointments Subject to
Confirmation.

Dear Representative Kany:

This responds to your request for advice regarding the
above-captioned legislation. Specifically you asked
whether the provisions of L.D. 1795 would, if enacted,
replace the common law conflict of interest standards as
the basis for determining conflicts of interest.

We would advise that L.D. 1795 would, if enacted,
replace the present common law conflict of interest
standards as addressed in In Re Opinion of the Justices,
330 A.2d 912 (Me., 1975) in determinations as to whether
a conflict of interest in regard to appointive positions
subject to legislative confirmation exists.

L.D. 1795 specifically states that:

"A conflict of interest would only
occur if, after examination of a
Governor's nominee, the legislative
committee reviewing that nomination
determines that a majority of a prospective
nominee's duties would directly involve
decisions concerning areas in which the
nominee has a financial interest."

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The legislation then goes on to address further qualifications on the conflict of interest standards. By the terms of the legislation ("a conflict of interest would only occur"), it is clear that the legislation is intended to substitute for the current common law standards which presently apply. The intent of the legislation to substitute for the common law is further confirmed by the Statement of Fact which indicates that the legislation is to be the standard for determining conflicts of interest and that nominees will not be held in conflict of interest unless their positions are inconsistent with the legislatively specified standard. The third paragraph of the Statement of Fact would also indicate an intent to modify the common law standards which have been proposed in recent years.

Accordingly, if J.D. 1795 is adopted, the standards of conflict of interest set out in L.D. 1795 would be the sole standards by which conflicts of interest regarding gubernatorial appointees subject to the provisions of L.D. 1795 would be judged.

I hope this information is helpful.

Sincerely,

DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec
cc: Senator Donald F. Collins

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