

MAINE STATE LEGISLATURE

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Conflict of Interest Architect

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 9, 1977

Charles M. Sexton, Staff Lawyer
Maine State Housing Authority
128 Sewall Street
Augusta, Maine 04333

Re: George B. Terrien

Dear Mr. Sexton:

This responds to your request for an opinion regarding any potential conflict of interest of George B. Terrien in his dealings with both the Maine Housing Authority and the Auburn Housing Authority.

This opinion is based on the facts stated in your opinion request of June 1, 1977, and in Mr. Terrien's letter of May 20, 1977, both of which are attached hereto and made a part of this opinion. Among these facts, we believe it is significant that Mr. Terrien has been acting as an independent contractor. We assume that his independent contractor status is as specified in the Standard Rider B of State Personal Services contracts. We also believe it is significant that Mr. Terrien will not act further as a consultant to the Maine Housing Authority on the Auburn project during his tenure as project architect for the Auburn Housing Authority.

Based on the facts you have stated, and limited to those facts plus the assumption that Mr. Terrien is operating under a Standard Rider B in State Personal Services contracts, it is our view that there is no legally prohibited conflict of interest in the activities Mr. Terrien proposes to undertake.

Mr. Terrien is not an employee or officer of the Maine Housing Authority. Further, it is our understanding that he will be neither an employee or an officer of the Auburn Housing Authority. Rather, he will act in the position of consultant. As such he cannot be

Charles M. Sexton, Staff Lawyer

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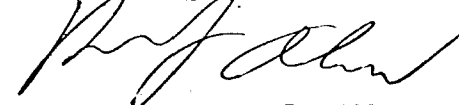
deemed an executive director, employee, member or commissioner of a housing authority for purposes of applicability of the provisions of 30 M.R.S.A. § 4603. As we find that Mr. Terrien is not in one of the covered categories of employment pursuant to section 4603, we need not reach the question of whether Mr. Terrien's involvement with the Barker Mill project is sufficient to create such a direct or indirect interest in the project or property as is addressed by section 4603. We do not comment on that question.

Further, we find no common law conflict of interest in the consulting roles filled by Mr. Terrien. Mr. Terrien has specifically indicated that he will not be in the role of aiding the Maine Housing Authority in overseeing any aspects of the work he may do regarding the Barker Mill project. Accordingly, there is no potential for a financial conflict of the type addressed by the Opinion of the Justices, 330 A.2d 912 (Me., 1975).

Thus, we find there is no legal conflict of interest with regard to the activities Mr. Terrien proposes to undertake.

Parenthetically, we should also note that we see no conflict of obligations such as would raise questions of professional misconduct which might be subject to address pursuant to the provisions of 32 M.R.S.A. Chapter 3, although this matter would be appropriately determined, in the first instance, by the Board of Registration of Architects.

Very truly yours,



DONALD G. ALEXANDER
Deputy Attorney General

DGA:mfe

cc: Board of Registration of Architects

STATE OF MAINE

Inter-Departmental Memorandum Date June 1, 1977

To Donald G. Alexander
Deputy Attorney General

Dept. _____

From Charles M. Sexton, Staff Lawyer

Dept. Maine State Housing Authority

Subject Conflict of Interest

This is a follow-up of our telephone conversation regarding the plans of George B. Terrien, Maine State Housing Authority's consultant architect, to act as the project architect for the Auburn Housing Authority in the conversion of the old Barker Mill in Auburn into "section 8" elderly housing, permanent financing to be provided by the Maine State Housing Authority. I would appreciate your opinion as to any possible conflict of interest under 30 MRSA § 4603 or the common law.

George B. Terrien has been the consulting architect for Maine State Housing Authority for several years. Our project development staff calls him regularly to seek his advice, especially with regard to the acceptability or non-acceptability of various sites proposed for low income housing projects. He consults from 25 to 75 hours per month, and bills us monthly. We pay his bills, taking no deductions for taxes, retirement, or any other employee items. He has no status to speak or act on behalf of the authority. He is employed in an advisory capacity only.

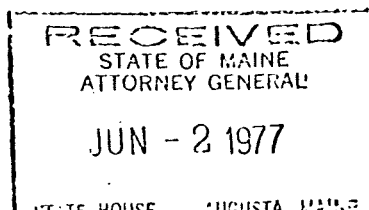
About a year ago, we asked George to look at the Barker Mill site and advise us as to its feasibility for rehabilitation for an elderly project. He looked at the site and gave it an excellent rating. He looked at the site again about 6 months ago with members of our staff and discussed the prospects for rehabilitation. He has since then participated in a few meetings with the Maine State Housing Authority staff and the Auburn Housing Authority to discuss the project. Now the Auburn Housing Authority wants to hire George as the project architect.

The Barker Mill project is one of a kind. HUD has allocated the rental subsidies, which make the project viable, to a public housing authority. Consequently there has been no competition among potential developers. The Barker Mill site was proposed by the Auburn Housing Authority, and was found to be an excellent site over a year ago. Consequently there has been no competitive selection among sites. The project is a cooperative effort of the Auburn Housing Authority and Maine State Housing Authority, and neither organization views George Terrien's hiring as project architect as involving any impropriety or conflict of interest whatsoever. Nonetheless, George will not act further as a consultant to Maine State Housing Authority on the Barker Mill project if he assumes the position of project architect for the Auburn Housing Authority. George's work as project architect will be reviewed and approved by Maine State Housing Authority staff following our normal procedures.

I am enclosing for your information George's letter to me of May 20, 1977. Please contact me if you would like further information. Thank you for your legal opinion.

CMS/rw

Enclosure



May 20, 1977

Mr. Charles M. Sexton
128 Sewall Street
Augusta, Maine 04330

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MAINE HOUSING AUTHORITY

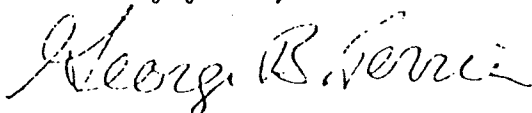
Dear Mac:

As you are well aware, I am to be retained by the Auburn Housing Authority to design the conversion of the Barker Mill for elderly housing. Because I have been, and wish to continue to be careful to avoid any conflict of interest, actual or possible, in my consulting relationship to the Maine State Housing Authority, I have examined what problems might arise in working for the Auburn Housing Authority on this development which is planned to be financed and subsidized through the Maine State Housing Authority. I have not discovered such a conflict. I would like you also to examine the situation, and to communicate to me any problems you might find. Even beyond considerations of conflict, I would decline to be the architect if the Maine State Housing Authority anticipates encountering any awkward consequence.

I do not consider myself to be in a conflict of interest because of the following circumstances. The Auburn Housing Authority is a non-profit developer that has joined with the Maine State Housing Authority for the purpose of converting the mill to housing, with common goals and without inherent conflict of purpose. Further, the Auburn Housing Authority is geographically limited in its operation, and so would be most unlikely to undertake another development that would involve us through the Maine State Housing Authority, at least during the course of the Barker Mill conversion. Moreover, since I would be working for the Auburn Housing Authority, I would not be working for any other of the participants such as Joe Wishcamper or Salter Corporation who are developers before the Maine State Housing Authority. Finally, the advice I have given the Maine State Housing Authority regarding the Barker Mill preceded any thought that I might become the architect for the conversion, except recently when the intention of the Maine State Housing Authority was to hire me to provide design services through it to the Auburn Housing Authority.

If your review and discussion with other members of the staff discloses no problems which create difficulty, I would appreciate a letter from you confirming the position of the Maine State Housing Authority on this matter. If problems do exist, please let me know so that I may decline in time for the Auburn Housing Authority to make other arrangements.

Sincerely yours,



George B. Terrien

GBT/gs

cc: Harry Woodard, Jr.
Hans Henkes
Pamela Scarcelli