

# MAINE STATE LEGISLATURE

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*State employees' Conflict of Interest  
Board of Environmental Protection' Conflict of Interest*

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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

November 28, 1977

Richard B. Anderson  
142 Concord Street  
Portland, Maine

Dear Mr. Anderson:

This letter is written in response to your request for an opinion concerning potential conflicts of interest if you continued to serve as a member of the Board of Environmental Protection after you accept an offer to be Vice-President and General Manager of Land Reclamation, Inc. (LRI). Our answer is that a conflict of interest would arise if, after employment by LRI, you participated in any application, hearing or other judicial or quasi-judicial proceeding involving the disposition of sludge or solid waste. A conflict of interest would also occur if you participated in any application, hearing or other proceeding which involved either LRI, its competitors, or an entity with which LRI or its competitors has or plans to have a business relationship. You may disqualify yourself on a case-by-case basis; it is not necessary that you resign from the Board altogether.

You have related to me the following facts: LRI is a closely-held Maine corporation which is in the sludge and waste disposal business. LRI plans to purchase sludge and waste disposal sites, contact with businesses and municipalities to dispose of their sludge and waste, and sell disposal sites after they are filled and properly closed. LRI also plans to use treated sludge for various purposes and to recycle scrap metal. LRI has offered you employment as its Vice-President and General Manager. As such you will be a full-time employee in charge of all day-to-day operations and management. Initially you would not be a stockholder or member of the board of directors.

Composition of the Board of Environmental Protection is established by 38 M.R.S.A. Section 361. The Board consists of 10 members who are chosen "to represent the broadest possible interest and experience which can be brought to bear in the implementation of this Title and all other laws which the Board is charged with the duty of administering." Six Board members constitute a quorum. Board members receive \$40.00 per day for their services at meetings and hearings; members also receive necessary traveling expenses. Not less than 2 board meetings per year shall be held. 38 M.R.S.A. Section 361. It is current practice for the Board to meet twice a month on the second and fourth Wednesdays of each month. Work for the Board is part-time and it is expected that members have some other source of income.

The statutory duties of members of the Board of Environmental Protection (Board) are found in part at 38 M.R.S.A. Section 361. Members of the Board shall consult with and advise municipalities, businesses and other persons as to the best methods of sewage and industrial waste disposal. The Board is to approve plans and specifications for any proposed new system of drainage, sewage disposal, sewage treatment or industrial waste disposal into any waters of the State. The Board shall establish and enforce reasonable standards for the operation and maintenance of municipal, industrial, commercial and private waste treatment facilities. Section 361. The Board is also empowered to adopt, amend and repeal necessary rules and regulations (Section 343), process applications (Section 344), conduct hearings (Section 345) notify the Attorney General of violations (Section 347), and revoke, suspend or modify licenses (Section 347).

The theory of conflict of interest has evolved from the principle that no person can serve two masters. Although everyone agrees with the theory, its application is not always easy and depends on a particular set of facts. As the Court stated in Tuscan v. Smith, 153 A. 289, 294, 130 Me. 36 (1931), "no definite rule can be given indicating the line of demarcation between that which is proper and that which is unlawful."

The most recent judicial pronouncement in Maine on conflict of interest was in a 1975 Opinion of the Justices. The Governor had nominated the President of the First National Bank of Farmington to be Maine's Commissioner of Finance and Administration. The nominee was to remain as a Director of the bank and also was to serve as a paid consultant to the bank. The Governor asked the Supreme Judicial Court for its opinion as to any potential conflict of interest. The Court, quoting from Lesieur v. Inhabitants of Rumford, 93 A. 839 (Me. 1915), reaffirmed the general rule that

the law requires of... (public officers) perfect fidelity in the exercise of... (the powers and duties of their office)... whatever has a tendency to prevent their exercise of such fidelity is contrary to the policy of the law, and should not be recognized as lawful... (emphasis supplied) Opinion of the Justices, 330 A.2d 912, 916 (1975).

It should be noted in passing that your part-time position as one member of a ten-member Board is significantly different from the full-time position of Commissioner of Finance and Administration. You are expected to have an outside source of income. Also, in your absence the other nine members can carry out directly the Board's statutory duties.

As Vice-President and General Manager of LRI, you will have a personal stake in the continuing good fortunes of the corporation. As an employee, you will be subject to the direction and control of LRI, your employer. As a member of the Board, you have "obligations as trustee for the public... It is well established as a general rule that one acting in a fiduciary relation... is required to exercise perfect fidelity to his trust." Lesieur v. Inhabitants of Rumford, 113 Me. 317, 320, 93 A. 838 (1915). In our view, it would not be necessary for you to resign from the Board because of your employment by LRI but in order to avoid a conflict of interest, you will have to excuse yourself from Board proceedings which relate to sludge or solid waste. You will also have to excuse yourself from Board proceedings which affect LRI, its competitors, or any entity with whom LRI or its competitors has or plans to have a business relationship.

Richard B. Anderson

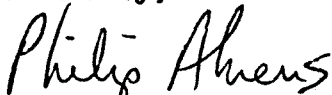
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November 22, 1977

A copy of this opinion is being sent at your request to Mr. Henry Warren, Chairman of the Board of Environmental Protection, and Mr. Charles Wyman of the Governor's office.

If you have any questions about any aspect of this opinion, please feel free to contact me at any time.

Sincerely,



Philip Ahrens  
Assistant Attorney General

PA:ldp

cc: Henry Warren  
Charles Wyman