

# MAINE STATE LEGISLATURE

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March 9, 1978

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

Dear Speaker Martin:

This responds to your request for an opinion as to whether a conflict of interest or other legal obstacle would exist to appointing a member of a state committee of the Republican or Democratic Party to the Commission on Governmental Ethics and Election Practices.

The qualifications of Commission members are specified in 1 M.R.S.A. § 1002-2. That section reads as follows:

"The members of the commission shall be persons of recognized judgment, probity and objectivity. No person shall be appointed to this commission who is a Member of the Legislature or who was a Member of the previous Legislature, or who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, or who now holds an elective county, state or federal office."

The membership prohibitions of the Commission are thus limited to certain present and former members of the Legislature and recently declared candidates for or incumbents in county, state or federal elective offices. The prohibition does not extend to members of partisan committees. However, in examining the question of conflict of interest relating to groups such as the Commission on Governmental Ethics and Election Practices, it is necessary to examine not only questions of specific statutory prohibitions, but also questions of common law standards relating to conflict of interest.

The common law conflict of interest criteria were summarized by the Maine Supreme Judicial Court in 1975.

"[t]he 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) (113 Me. p. 321, 93 A. p. 829)."\* Opinion of the Justices, 330 A.2d 912 at 916 (Me., 1975).

Thus the question becomes: would the two positions in question present a person holding both positions with conflicting obligations which could, or might, have a tendency to prevent exercise of perfect fidelity and complete independent judgment in carrying out the public trust.

Pursuant to 1 M.R.S.A. § 1008, the Commission is assigned two basic general duties: first, to investigate and made advisory recommendations to the appropriate body regarding ethical standards of the Legislature; second, to administer and investigate violations of campaign reporting and financing laws and to make investigations and findings of fact and opinions providing advice or final determination with regard to contested county, state or federal elections.

We will assume for purposes of this opinion that the first of the Commission functions, legislative ethics, would present no serious problem for a member of a partisan state committee. However, the principal purpose of partisan state committees is to promote, through finance, advocacy and other means, the election of members of that particular party to county, state and federal office. That being the case, we believe there would be serious questions of the capacity of a member of a partisan state committee to sit, as a regulator of campaign finances and reports or as a final judge or advisor in disputed elections in which members of that particular person's party participated.

While it would be possible for the person in question to abstain from those portions of Commission business which related to resolution of election disputes and regulation of campaign reporting and financing practices, we believe that the person would have to abstain from such a large portion of

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\* The quote is taken directly from the 1975 opinion, the editing of the quotation from a prior case, Lesieur v. Inhabitants of Rumford, 113 Me. 317 (1915) is by the Court.

the Commission's business that the value of that person's membership on the Commission might be severely compromised. Accordingly, it would be the advice of this office that there are sufficient actual and apparent conflicts of interest between the position of a member of a state committee of a political party and the position of member of the Commission on Governmental Ethics and Election Practices that the two positions are incompatible.

Sincerely,

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