

# MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date March 31, 1978

To Andrew Brown, Esquire Dept. Executive

From James Eastman Smith, Assistant Attorney General Dept. Human Services

Subject Appointment of a Hearing Aid Dealer and Fitter to the Board of Examiners on Speech Pathology and Audiology

We have reviewed our opinion of January 6, 1977, concerning the reference subject, as you requested. That opinion concluded that a hearing aid dealer and fitter may not be appointed as a "public" member of the State Board of Examiners on Speech Pathology and Audiology for two reasons. First, the Legislature specifically rejected Amendment A and adopted Amendment B. Second, a hearing aid dealer and fitter has potentially conflicting economic and professional interest in the area. After carefully reviewing this question and once again conducting in depth research into the legislative history of the membership provisions, we are reversing our opinion of January 6, 1977, and conclude that a hearing aid dealer and fitter may be appointed to the Board.

Membership on the Board of Examiners on Speech Pathology and Audiology is governed by the provisions of 32 M.R.S.A. §6010, as enacted by P.L. 1975, Chapter 705, § 4. That Chapter of the Public Laws enacted L.D. 2144 as amended by Committee Amendment "B" (S-462). As noted in our earlier opinion, there was also a Committee Amendment "A" (S-461) which was offered to the Legislature as the majority report of the Committee on Business Legislation on L.D. 2144. Committee Amendment "B" was the minority report. The only difference between the two amendments was the provision concerning membership of a hearing aid dealer and fitter on the Board. Since the version which was rejected included a provision for membership of a hearing aid dealer and fitter on the Board while the enacted version did not, we concluded in our earlier opinion that the Legislature specifically expressed its intent to delete a hearing aid dealer from the Board. However, a fine point that was overlooked in the original research brought us to a different conclusion.

L.D. 2144 was the subject of considerable discussion in the House of Representatives. Volume 3, Legislative Record, 107th Legislature, First Special Session, House of Representatives, March 25, 1976, pages 663-665. During this discussion, one of the signers of the minority committee report (Committee Amendment "B") made the following statement:

"Report A mandates that we have a hearing dealer on the Board. Report B says you are going to have two consumers, one or both of whom may be hearing aid dealers, but it doesn't mandate it."

This statement of the intent of Committee Amendment "B" was not challenged by another member of the Committee and therefore should be given priority concerning Legislative intent. It should be added, however, that a statement was made during debate expressing

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the fear that a conflict of interest would result if a hearing aid dealer were to be appointed to the Board. We conclude, based upon the above specific statement of intent, that it would be proper to appoint a hearing aid dealer and fitter as a "representative of the public" to the Board.

In conclusion, it should be stressed that this opinion is the result of the specific and unique legislative history of this particular legislation. The opinion should not be considered as a statement on the qualifications of a "representative of the public" on any other state board. Under normal circumstances such representative should be disinterested in the professional practice which is being regulated. A public representative should not have significant economic or professional interest in the regulated field. We believe such analysis is in keeping with the intent of P.L. 1975, Chapter 575 which placed "public members" on several state boards and agencies.

JES:mm