

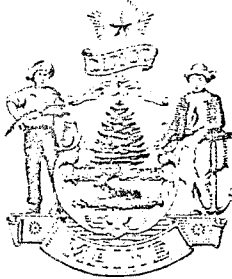
# MAINE STATE LEGISLATURE

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RICHARD S. COHEN  
ATTORNEY GENERAL



STEPHEN L. DIAMOND  
JOHN S. GLEASON  
JOHN M. R. PATERSON  
ROBERT J. STOLT  
DEPUTY ATTORNEYS GENERAL

8/10/78  
79-51

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

March 21, 1979

Honorable Richard H. Pierce  
Assistant Majority Leader  
Maine State Senate  
State House  
Augusta, Maine 04333

Dear Senator Pierce:

You have requested an opinion regarding whether there is any incompatibility or conflict of interest where an individual holds the position of Assistant Director of Finance for the Maine State Housing Authority and elective office on a municipality's city council. It is my opinion that there is no incompatibility or conflict of interest in the positions referred to above.

The Maine State Housing Authority was created by 30 M.R.S.A. § 4601-A (1978) and the specific powers and duties of the authority are set forth in paragraphs (1) (A) to (1) (M) of section 4601-A. Moreover, the State Housing Authority, as well as local housing authorities, are public corporations which exercise public and essential governmental functions and have the general powers articulated in 30 M.R.S.A. §4651 (1978). Among the powers of the State Housing Authority is the authority to issue bonds, accept federal funds, make loans, and invest funds. See 30 M.R.S.A. §4601-A(1) (E), (H), (L) (1978). See also 30 M.R.S.A. §4651 (6) (1978). The Assistant Director of Finance is responsible for the overall financial administration of the Maine State Housing Authority.

As a city councillor, a person could conceivably have some interaction with the State Housing Authority. It is my understanding that prior to doing any business in a community, the State Housing Authority must obtain the consent of the municipality's governing body as well as any local housing authority. 30 M.R.S.A. §4651 (10) (1978). It is also my understanding that with respect to multi-family units which are federally subsidized, prior approval of the municipality's governing body must be obtained. With respect to any development receiving financial

7

Honorable Richard H. Pierce  
March 21, 1979  
Page two

assistance from the State Housing Authority, the city council would be involved in considering requests for various permits, as is the case in any other construction project.

In Howard v. Harrington, 114 Me. 443, 446-47 (1916) the Supreme Judicial Court of Maine articulated the test to be employed to determine when two offices are incompatible. As stated by the Court, "[t]he test of incompatibility is the character and relation of the offices, as where the functions of the two offices are inherently inconsistent and repugnant." Thus, where two offices are by nature inconsistent and in conflict with each other, an incompatibility exists. Our examination of the functions of the two offices, as recited above, reveals that while they may occasionally entail involvement in the same matters, the nature of that involvement is not sufficient to render the offices inconsistent, repugnant or in conflict with each other. A person can discharge the duties of both offices without being placed in an inherently antagonistic situation. Howard v. Harrington, *supra* at 447. It is my conclusion that the common law doctrine of incompatibility does not bar an individual from holding the positions of Assistant Director of Finance for the Maine State Housing Authority and City Councillor simultaneously.

There is also a specific conflict of interest statute which prohibits an employee of the State Housing Authority from participating in a decision regarding a matter in which he has a direct or indirect interest. 30 M.R.S.A. §4603. However, this statute is designed to address conflict of interest situations involving pecuniary interests of an employee and would not prohibit an Assistant Director from holding office on a municipality's city council.<sup>1</sup> See Op. Atty. Gen., April 22, 1977.

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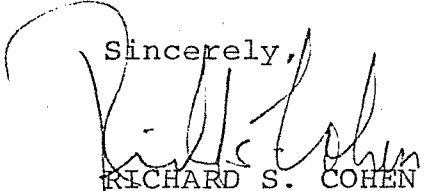
1. I would point out, however, that in view of the fact that a municipality's governing body may be involved in decisions which would affect the activities of the State Housing Authority, it may be advisable, as a policy matter, for the Assistant Director to refrain from acting or participating as either an employee of the Authority or as a city councillor. It is my understanding that the individual in question is already following this practice.

Honorable Richard H. Pierce  
March 21, 1979  
Page three

You have also inquired whether the Assistant Director would be prohibited from running for re-election as a city councillor. Since the Assistant Director is not a classified state employee, I see no reason why, under state law, he could not seek re-election as a city councillor.<sup>2</sup> See 5 M.R.S.A. §679-A (1979).

I hope this information is helpful to you. Please feel free to call upon me if I can be of further assistance.

Sincerely,



RICHARD S. COHEN  
Attorney General

RSC:sm

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2. You have also inquired whether it is legally permissible for the Assistant Director to seek election to some other "higher office". In the absence of a specific factual situation, it is not possible for me to answer this question.