

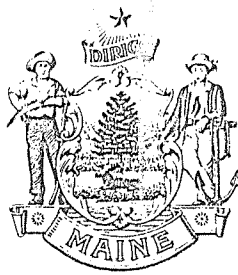
MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 11, 1979

Honorable Philip Berry
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Berry:

You have requested an opinion as to whether there is any conflict of interest in a county treasurer acting as a lobbyist.¹ After a review of the relevant law, it is my conclusion that in the absence of a specific factual situation it is not possible for me to provide an unequivocal response to your inquiry. Nevertheless, I can make some general observations regarding the office of county treasurer and the possibility of conflict of interest violations occurring where such an officeholder acts as a lobbyist.

In Opinion of the Justices, Me., 330 A.2d 912 (1975) the Supreme Judicial Court articulated the principles relating to the concept of "conflict of interests." The Court was careful to point out that the concept of "conflict of interests" is separate and distinct from the doctrine of incompatibility of offices which only² applies when an individual holds more than one public office.² Id. at 916. The common law doctrine of "conflict of interests" has application where an individual holds a public office and is also involved in the private sector such that there is a question as to whether he can be totally faithful to his public duties.

A public officer is required to exercise his powers and fulfill his legal obligations with "perfect fidelity...and whatever has a tendency to prevent [the] exercise of such fidelity is contrary to the policy of the law, and should not be recognized as lawful...." Lesieur v. Inhabitants of Rumford, 113 Me.317, 321, 93 A.838, 839(1915) quoted in Opinion of the Justices, Me., 330 A.2d at 916. As a public officer, an individual acts as a

1. As used in this opinion, the term "lobbyist" refers to professional lobbyists and has the same meaning as in 3 M.R.S.A. §312 (9)(1979). See text accompanying notes 4-5, infra.

2. The leading case on incompatibility of offices is Howard v. Harrington, 114 Me. 443 (1916).

Honorable Philip Berry
April 11, 1979
Page two

trustee on behalf of the public and as such he must not be placed "in a situation of temptation to serve his own personal interests to the prejudice of the interests of those for whom the law authorized and required him to act in the premises as an official." Tuscan v. Smith, 130 Me. 36, 46, 153 A.289 (1931) quoting Lesieur v. Inhabitants of Rumford, supra at 321.

While articulation of the principles relating to the doctrine of "conflict of interests" is quite simple, it does not necessarily follow that each "conflict of interests" case has precedential value. In order to determine whether a "conflict of interests" exists with respect to a given situation, it is necessary to examine the nature of the public office involved as well as the private interest at issue. Consequently, "questions concerning whether there is a 'conflict of interests' violative of law are not susceptible of generalized answers. Essentially, each case will be 'law' only unto itself." Opinion of the Justices, Me., 330 A.2d at 917 (1975). See also Tuscan v. Smith, 130 Me. at 46, 153 A. at 294.

The office of county treasurer is an elective office and the responsibilities of a county treasurer are specified by statute. See 30 M.R.S.A. §§601-756 (1978). Preliminarily, it should be observed that there is nothing in the statutes relating to county treasurers which expressly prohibits the holder of such office from acting as a lobbyist.³ The treasurer of a county is charged with the responsibility of depositing and investing county funds (30 M.R.S.A. §701); making an annual statement of the financial condition of the county (30 M.R.S.A. §703); making payments out of the county treasury (30 M.R.S.A. §704); keeping an account of the monies due to the county and enforcing the payment of taxes (30 M.R.S.A. §751). Additionally, the county treasurer is required to record all fines and costs accruing to the State (30 M.R.S.A. §752); to receive all federal money for the use of county jails

3. 30 M.R.S.A. §601(1978) does list certain officeholders who cannot serve as county treasurer. Section 601 provides in relevant part:

"Neither the Attorney General, county attorney, clerk of courts, sheriff of the county nor any of his deputies shall be county treasurer."

This provision is actually a statutory "incompatibility of offices" provision.

It should also be observed that by Chapter 657, §16 of the Public Laws of 1977 the Legislature enacted 30 M.R.S.A. §605 (1978-79 Supp.) which provides that "[t]he treasurer of Androscoggin County shall devote his entire time to the duties of his office." Thus, it would appear that the Androscoggin County Treasurer could not be employed as a lobbyist.

Honorable Philip Berry
April 11, 1979
Page three

(30 M.R.S.A. §755); and to account for all "money or effects belonging to his county." (30 M.R.S.A. §754). Finally, each county treasurer is required to give a bond "for the faithful discharge of his duties." (30 M.R.S.A. §603).

3 M.R.S.A. §§311 to 322 (1979) govern the procedures for disclosure and registration of lobbyists in the State of Maine. As defined in 3 M.R.S.A. §312(8) the term "lobbying"

"...means to communicate directly with any official in the Legislative Branch for the purpose of influencing any legislative action, when reimbursement for expenditures or compensation is made for such activities."⁴

A lobbyist is statutorily defined as "any person who is specifically employed by another person for the purpose of and who engages in lobbying; or any person who, as a regular employee of another person, expends an amount of time in excess of 8 hours⁵ in any calendar month in lobbying." 3 M.R.S.A. §312(9) (1979).

As stated in 3 M.R.S.A. §311(1979) the Legislature's purpose in requiring that professional lobbyists register with the Secretary of State and disclose certain information regarding their lobbying activities is to "insure the openness and integrity of the legislative process and encourage the expression of the will of all the people of the State." Any individual who is a

4. 3 M.R.S.A. §312(8) (1979) also provides that certain conduct shall not constitute lobbying. Specifically, subsection 8 provides:

"Lobbying shall not include communications made in conjunction with the appearance by any person before any committee in connection with any matter or measure before such committee and any written statement submitted by any person to any committee in connection with such matter or measure; or any communication made by a person in response to an inquiry or request for information by an official in the Legislative Branch."

5. 3 M.R.S.A. §312(9) (1979) also provides that the following shall not be considered a "lobbyist:"

"...an individual who is a partner, associate, member or employee of a partnership, firm, corporation or professional association which has been employed for lobbying when such individual is acting for the lobbyist in representing the employer."

Honorable Philip Berry
April 11, 1979
Page four

lobbyist within the meaning of the Lobbyist Disclosure Procedures Act is required to register jointly with his employer at the Office of the Secretary of State. 3 M.R.S.A. §313(1979). Each lobbyist is required to file a monthly session report and the lobbyist and his employer must file joint reports at the end of each legislative session and at the end of each calendar year. 3 M.R.S.A. §317(1), (2), (3) (1979).⁶ While 3 M.R.S.A. §318(1979) restricts certain activities by lobbyists,⁷ there is no statutory prohibition against any particular class of individuals from becoming professional lobbyists. Thus, nothing in the Lobbyist Disclosure Procedures Act explicitly prohibits a county treasurer from acting as a lobbyist.

An examination of the powers and duties of the office of county treasurer and the functions of a professional lobbyist reveals no per se conflict of interest in the two positions. Being a lobbyist would not necessarily compromise a county treasurer's fidelity to the duties of his public office. However, a lobbyist does not act in the abstract. Rather, his services are engaged by a particular employer to perform specific lobbying activities. It is certainly conceivable that an individual's relationship with a particular employer could jeopardize the "perfect fidelity" which a public officer is expected and required to exercise. A "conflict of interest" situation could

6. In these reports, the lobbyist must provide information regarding the amount of compensation received and expenditures reimbursed for lobbying as well as the total number of hours devoted to lobbying activities. Furthermore, the lobbyist is required to furnish detailed information regarding the specific matter which was subject of his lobbying activity.

7. 3 M.R.S.A. §318(1979) provides:

"1. No person shall accept employment as a lobbyist on a basis which makes that person's compensation contingent in any manner upon the outcome of any legislative action.

2. No person shall instigate the introduction or commencement of any legislative action for the purpose of obtaining employment as a lobbyist to oppose or support such legislative action."

3 M.R.S.A. §319(1979) provides criminal penalties for violations of the Lobbyist Disclosure Procedures Act.

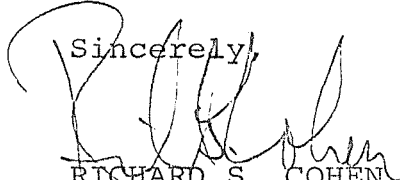
Honorable Philip Berry
April 11, 1979
Page five

be created by virtue of the facts and circumstances surrounding a county treasurer's employment as a lobbyist. Moreover, a "conflict of interest" situation could arise as a result of particular lobbying activities engaged in by a county treasurer. For example, it is possible that an individual could lobby in support of or in opposition to certain legislative action which would not necessarily be consistent with his responsibilities as a county treasurer.

In view of the foregoing, it is apparent that an almost infinite variety of factual situations could be conceived in which a "conflict of interests" could be generated as a result of a county treasurer acting as a lobbyist. Consequently, to determine whether a particular situation constitutes a violation of the common law concept of "conflict of interests" it is necessary to evaluate the facts and circumstances of each individual case.

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

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:sm