

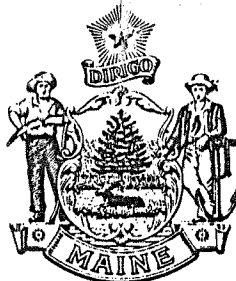
MAINE STATE LEGISLATURE

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June 13, 1979

TO: H. Donald DeMatteis, Superintendent, Bureau of Banking
FROM: Peter Bickerman, Assistant, Dept. of Attorney General
SUBJECT: Possible Conflict of Interest

During his tenure as Superintendent of Banking, John A. Durham requested an opinion with regard to the professional activities of Roberta M. Weil, the wife of Gordon L. Weil, Commissioner of Business Regulation. Superintendent Durham's request stated that Mrs. Weil serves as a corporator of one Maine financial institution, and that Mrs. Weil has performed certain work for other financial institutions. In one instance Mrs. Weil appeared as an expert witness for an institution involved in a Banking Bureau hearing. Superintendent Durham asked whether the continuation of Mrs. Weil's activities would create legal problems in light of her husband's appointment to office.

Our answer is that neither statutory law nor common law requires that Mrs. Weil restrict her work on behalf of financial institutions under the present circumstances. In other words, no conflict of interest exists between Commissioner Weil's position and Mrs. Weil's limited involvement with banking.

In analyzing the issue at hand we start with the recognition that "questions concerning whether there is a 'conflict of interest' violative of law are not susceptible of generalized answers." Opinion of the Justices, 330 A2d 912, 917 (Me. 1975). One must examine the particular circumstances of each case to determine whether factors exist which would prevent public officials from fulfilling their "obligations as trustees for the public" Tuscan v. Smith, 130 Me. 36, 46, 153 A. 289, 294 (1931). The powers and duties of the Commissioner of Business Regulation are set forth in 10 M.R.S.A. Section 8002. While the Commissioner is the chief administrative officer of the Department of Business Regulation, and is empowered to review the operation of bureaus, boards, and commissions within the Department, the law limits the Commissioner's authority in the following manner:

"The commissioner shall not have the authority to exercise or interfere with the exercise of discretionary regulatory or licensing authority granted by statute to the bureaus, boards or commissions within the department set forth in section 8001." 10 M.R.S.A. Section 8002.

Thus the Commissioner of Business Regulation may not exercise, directly or indirectly, regulatory authority over financial institutions. Such regulation is conducted by the Superintendent of Banking. 9-B M.R.S.A. Section 211.¹ While the Commissioner may have power to remove the Superintendent from office, this lever of control must be viewed consistently with the policy limitations contained in 5 M.R.S.A. Section 8002. By statute, the Commissioner does not regulate financial institutions, and he cannot make personnel decisions based solely on policy judgments rendered by the Superintendent of Banking. As long as the Commissioner and Superintendent perform their respective roles, the banking activities of the Commissioner's spouse do not create a conflict of interest. The content of Mrs. Weil's work may become a factor in decisions assigned by law to the Superintendent of Banking, but there are no such links between her work and the functions of the Commissioner of Business Regulation. Administrative officials are presumed to act within the scope of their authority. Central Maine Power Co. v. Waterville Urban Renewal Authority, 281 A2d 233, 242 (Me. 1971).

While the activities described in Superintendent Durham's memorandum do not create a conflict of interest for Commissioner Weil, this finding is limited to the particular factual context. As a general proposition, government officials should be sensitive to areas of potential conflict, and legal advice should be sought in cases where uncertainty exists.

Please contact this office if we can provide further assistance.



Peter Bickerman
Assistant Attorney General

cc: Gordon L. Weil

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A more difficult case would be presented if the Superintendent rather than the Commissioner were involved. See, by contrast, Opinion of the Justices, 330 A2d 912 (Me. 1975).