

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

December 5, 1983

Honorable Judy C. Kany  
Maine Senate  
State House Station #3  
Augusta, Maine 04333

Honorable John L. Martin  
Speaker of the Maine House of Representatives  
State House Station #2  
Augusta, Maine 04333

Dear Senator Kany and Speaker Martin:

You have asked whether it would violate any provision of law for the members of the Low-level Waste Siting Commission to accept an offer of the Maine Yankee Atomic Power Company to pay their transportation and housing expenses for a trip to Barnwell, South Carolina, in order to inspect the low-level radioactive waste disposal facility there. For the reasons which follow, it is the opinion of this Department that there are no legal impediments to the acceptance of this offer by any of the members of the Commission.

The Low-level Waste Siting Commission was established by P.L. 1981, ch. 439 for the purpose of studying the management, transportation and disposal of low-level radioactive waste in order to assist the Governor and the Legislature in regulating such activity within the State. The Commission consists of nine members, four of whom are members of the Legislature, three of whom are members of the Executive Branch, and two of whom are private citizens. Various members of the Commission have expressed an interest in visiting the only operating low-level radioactive waste facility in the Eastern United States at Barnwell, South Carolina, to assist them in

discharging their statutory functions. While the Legislature has provided some funding to the Commission to assist it in carrying out its responsibilities, it appears that the funds available are not sufficient to pay the expenses of all of those members of the Commission wishing to visit the Barnwell site. Consequently, on November 16, 1983, the Maine Yankee Atomic Power Company, the principal generator of low-level radioactive waste in Maine, offered to provide transportation and housing costs for any member of the Commission who wished to avail himself of that offer. The offer, a copy of which is attached, proposes to fly the participants to Columbia, South Carolina, and to house them there that night; to transport the participants by bus to Barnwell to inspect the facility the next morning; and to fly them back to Maine that evening.

Two statutes present themselves as possible barriers to the acceptance of this offer by the members of the Commission: The provisions of the Maine Criminal Code, Title 17-A, M.R.S.A., relating to the bribing or conferring of gifts upon public servants, and the Legislative Ethics Act, 1 M.R.S.A. § 1011, et seq. which applies to the activities of members of the Legislature. The relevant provisions of the Criminal Code, which apply to any "public servant",<sup>1/</sup> prohibit any such person from accepting "any pecuniary benefit" from a person who, generally, has an interest in the manner in which the servant discharges his public function. 17-A M.R.S.A. §§ 602(1)(B), 605(1)(A). The term "pecuniary benefit" is further defined to mean "any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain." 17-A M.R.S.A. § 602(2)(C) (emphasis added). The question presented here, therefore, is whether the provision of transportation and lodging expenses to members of the Low-level Waste Siting Commission to permit them to gain information to assist them in discharging their responsibilities would constitute the conferral of any economic advantage upon them.

In the view of this Department, such would not be the case. In view of the relatively tight schedule of the proposed excursion, it is difficult to conclude that the provision of free transportation services or free lodging for one night would constitute the conferral of something which would have any particular pecuniary value to any member of the

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<sup>1/</sup> For purposes of this opinion, it will be assumed that the two private citizen members of the Commission are "public servants" within the meaning of the anti-bribery statutes to the extent that they are engaged in the business of the Commission. 17-A M.R.S.A. § 2(21).

Commission. Indeed, to the extent that the members of the Commission would be obliged to forego employment or other economically beneficial activity during the same period, their acceptance of the offer would be to their economic disbenefit. Accordingly, since there does not appear to be any "advantage", nor any "economic gain" accruing to any member of the Commission who accepts the offer, this Department cannot say that the recipients of the offer would be guilty of accepting bribes or improper gifts within the meaning of the Criminal Code.

The only question remaining, therefore, is whether the acceptance of the offered transportation or lodging by the legislative members of the Commission would violate the Legislative Ethics Act. Section 1014(1)(B) of that statute specifies that a conflict of interest shall arise, sufficient to disqualify a member of the Legislature from voting on any related question, when a member of the Legislature accepts a "gift" where the purpose of the gift is to influence the Legislator in the performance of his duties. I.M.R.S.A. § 1014(1)(B). The term "gift" is undefined in the statute. Nonetheless, it would appear to this Department that the word should be interpreted in a manner similar to the definition of the term "pecuniary benefit" included in the anti-bribery laws just discussed. Only if a legislator accepts something of value which is to his economic advantage could a conflict of interest arise under the Legislative Ethics Act. Thus, since, as explained above, the services offered in the case at hand could not be viewed as being to the economic advantage of any member of the Commission,<sup>2/</sup> they should not be considered a "gift" within the meaning of the Legislative Ethics Act.

In responding to your question, I would like to reiterate my concern that, with regard to the applicability of the Legislative Ethics Act, questions of this kind should more properly be resolved by the Legislative Ethics Commission, which the Legislature has established for that purpose, than by requests for advice from my office. I have provided our views in this case because, as in the situation involving the offer

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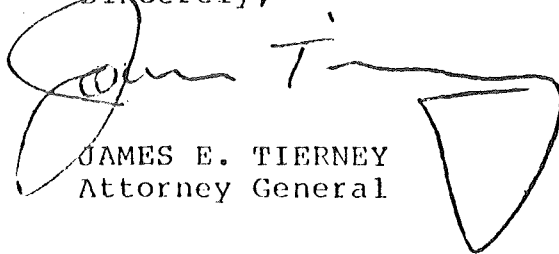
<sup>2/</sup> The conclusion of this Opinion is therefore different from the advice rendered on August 18, 1983 to Speaker Martin, copy attached, regarding whether the acceptance of low-cost whitewater rafting trips by a member of the Legislature would cause a conflict of interest to arise under the Legislative Ethics Act. Since a free or low-cost whitewater rafting trip would be something of pecuniary value to anyone receiving it, its offer to a member of the Legislature would constitute a "gift" within the meaning of the Act.

of low-cost whitewater rafting trips to members of the Legislature, there is insufficient time to assemble the Commission to allow it to render an opinion. Nonetheless, I would hope that in the future the Legislature would be able to anticipate problems of this kind in order to permit it to avail itself of its own procedures.

Finally, in setting forth the foregoing, I do not wish to be interpreted as suggesting that it would be preferable for the costs of this trip to be paid for by private persons with an interest in the affairs of the Commission, rather than by the State Government,<sup>3/</sup> nor do I wish to be viewed as encouraging the members of the Legislature to avail themselves of offers of this kind. To quote the Legislative Ethics Act, "The Legislature cannot legislate morals and the resolution of ethical problems must indeed rest largely in the individual conscience." 1 M.R.S.A. § 1011, seventh paragraph.

I hope the foregoing is of assistance to you. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY  
Attorney General

JET/ec

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<sup>3/</sup> As you know, the Legislative Council has available to it funds to defray the expenses of individual legislators in discharging legislative functions. See generally the portion of Section 23 of Part A of P.L. 1981, ch. 110 appropriating money for the operation of the Legislature for the 1983-85 biennium, and 3 M.R.S.A. § 162.

JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

August 18, 1983

Honorable John L. Martin  
Speaker  
House of Representatives  
State House Station #2  
Augusta, Maine 04333

Dear Speaker Martin:

You have asked for my views regarding the propriety of members of the Maine Legislature accepting an offer from the Whitewater Outfitters Association of Maine, Inc. to participate, at a cost of \$15 for up to two people, in a whitewater raft trip on the Penobscot River on August 25, 1983. You have further indicated that the price includes luncheon on the river, and that the fee generally charged by the Association for the services in question runs substantially in excess of that which is being asked of any participating Legislator.

The most relevant provision of law concerning your question is Section 1014 of the Maine Legislative Ethics Act, 1 M.R.S.A. § 1011, et seq., which provides, in pertinent part,

"1. Situations involving conflict of interest. A conflict of interest shall include the following:

\* \* \*

"B. Where a Legislator or a member of his immediate family accepts gifts, other

than campaign contributions duly recorded as required by law, from persons affected by legislation or who have an interest in a business affected by proposed legislation, where it is known or reasonably should be known that the purpose of the donor in making the gift is to influence the Legislator in the performance of his official duties or vote, or is intended as a reward for action on his part."

The first paragraph of the letter of the President of Whitewater Outfitters Associations of Maine, Inc., offering the whitewater raft trip to members of the Legislature at a substantially reduced price, states:

"The past year saw much legislation dealing with rivers in Maine. The many users of Maine rivers, including whitewater rafting, canoeing, fishing, camping and hydro power, will almost certainly be issues that are with us in the years ahead."

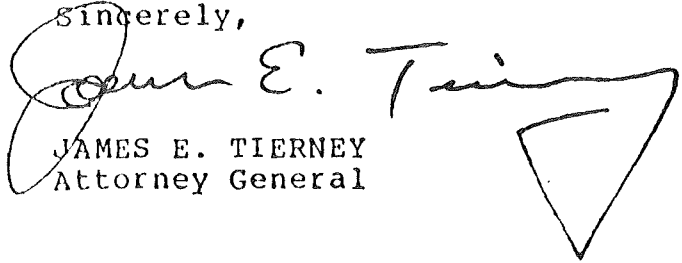
It thus appears that the offer of a low-cost raft trip is intended to "influence [Legislators] in the performance of [their] official duties or vote" in future years within the meaning of 1 M.R.S.A. § 1014(1)(B). That being the case, should individual Legislators choose to participate in this activity, such participation could well be construed to constitute acceptance of a "gift" and give rise to conflicts of interest for such Legislators should further legislation concerning the regulation of whitewater rafting, or activities such as hydropower development which might be inconsistent with whitewater rafting, come before the Legislature in the future. Under these circumstances, I would immediately encourage members of the legislature not to accept this particular invitation, unless they were to pay the normal price for the service.

Please be further advised that in providing you with my views on this question, I do not mean to be interfering with the procedure which the Legislature has established for resolving questions of this kind. As you know, the Legislative Ethics Act establishes a Legislative Ethics Commission, whose function is to advise individual members of the Legislature as to the interpretation of the Act. The reason that I am providing you with my thoughts is only that, in view of the time constraints involved, it would be impossible to assemble the Commission in sufficient time to allow it to render an

opinion. I should hope, therefore, that the course which the Legislature has provided for the resolution of legislative ethics questions will continue to be used in the future when time is not of the essence.

I hope the foregoing is responsive to your inquiry. Please feel free to reinquire if any further clarification is necessary.

Sincerely,

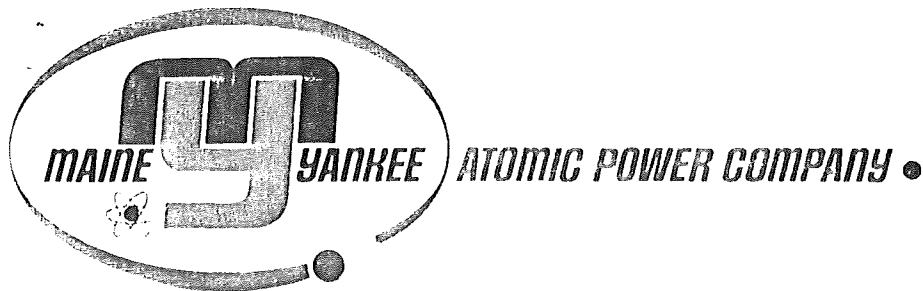
A handwritten signature in cursive script that reads "James E. Tierney". The signature is written in black ink and is positioned above the typed name. To the right of the signature is a large, hand-drawn triangle.

JAMES E. TIERNEY  
Attorney General

JET/ec

cc: Jim Ernst





EDISON DRIVE  
AUGUSTA, MAINE 04336  
(207) 623-3521

November 16, 1983

Rep. John L. Martin  
P.O. Box 250  
Eagle Lake, Maine 04739

Dear Rep. Martin:


You are invited to participate in a tour of the Barnwell, South Carolina low level radioactive waste disposal facility on December 12, 1983. Maine Yankee Atomic Power Company has arranged the tour in cooperation with Chem-Nuclear Systems, Inc., the operator of the Barnwell facility, in order to provide Maine decision makers with an opportunity to view an operating low level radioactive waste disposal facility.

Tour participants will leave from the Portland Jetport at approximately 11:00 A.M. on December 11. Accommodations have been arranged at the Carolina Inn in Columbia, South Carolina which is approximately 60 miles from the Barnwell site. On Sunday evening, participants will be able to meet with South Carolina state regulators and legislators to discuss the Barnwell operation from their perspective. On Monday morning, a bus will take participants to the Barnwell site for a two hour tour of the facility. The return flight to Maine is scheduled for 5:00 P.M. on Monday.

We hope that you will be able to attend the Barnwell tour and feel confident that such a visit could add an important dimension to your role in the decision making process on low level waste disposal for the state of Maine. Maine Yankee has agreed to underwrite the expense of this tour for a few key Maine decision makers although individual participants are welcome to arrange for alternative financing of their tour if preferred.

If you are interested in attending the Barnwell tour please notify me or Donald Vigue, Maine Yankee Director of Public Affairs, by November 23, 1983. At that time we will also need your social security number and home addresses for reporting purposes. Please contact me or Mr. Vigue if you have any questions regarding the tour. I hope to see you Sunday, December 11 for what promises to be a very informative and worthwhile study tour of an operating low level radioactive waste disposal facility.

Sincerely,

  
Charles D. Frizzle  
Assistant Vice President

CDF/sla

cc Low Level Waste Siting Commission  
Richard Davies  
Richard Barringer  
George Seel  
Sen. Gerard Conley  
Rep. John Martin  
Carol Fritz  
Donald H. Marden, Esq.