

# 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  
March 12, 1985

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

Dear Senator Kany:

You have inquired whether Mr. John P. Richards, Jr., a member of the Land Use Regulation Commission (the "Commission"), would violate 5 M.R.S.A. § 18 (Supp. 1984) were he to participate in the pending application of the Great Northern Nekoosa Corporation ("Great Northern") for a permit from the Commission to construct a hydroelectric dam on the West Branch of the Penobscot River, pursuant to the Maine Waterway Development and Conservation Act, 38 M.R.S.A. § 630 - 636 (Supp. 1984). Specifically, you ask whether either Mr. Richards' past business relations with Great Northern or the current business relations of a corporation owned by his son would require his disqualifying himself from the proceeding to avoid violating the statute. For the reasons which follow, it is the opinion of this Department that neither of these circumstances requires such a disqualification. As long as Mr. Richards has not engaged and does not engage in business relations with Great Northern during the pendency of its application, the statute is not violated. Further, the statute does not apply at all to the actions of his children who are no longer his dependents.

The facts, as we understand them, are as follows. Mr. Richards, who recently joined the Commission, is the owner of J. P. Richards & Sons, Inc., a logging contractor. While this company has had frequent contracts with Great Northern in the past, it completed the last of these contracts in January of 1984, prior to Mr. Richards' joining the Commission and prior to the filing of the company's application for a hydroelectric dam. The company currently has no contract or other business

relations with Great Northern. However, Great Northern does have a current logging contract with Evergreen Forests Products, Inc., a corporation owned by Mr. Richards' son.

5 M.R.S.A. § 18, in pertinent part, provides:

\* \* \*

2. Executive employee. An executive employee<sup>1/</sup> commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:

A. Himself, his spouse or his dependent children;

\* \* \*

C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment;

D. An organization in which he has a direct and substantial financial interest;

\* \* \*

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<sup>1/</sup> An "executive employee" is defined by 5 M.R.S.A. § 18(1)(B) to mean:

B. "Executive employee" means the constitutional officers, the State Auditor and compensated members of the classified or unclassified service employed by the Executive Branch, but it shall not include:

- (1) The Governor;
- (2) Employees of and members serving with the National Guard;
- (3) Employees of the University of Maine, the Maine Maritime Academy and State vocational-technical institutes; and
- (4) Employees who are employees solely by their appointment to an advisory body.

It is clear, that were Mr. Richards' company currently engaging in business dealings with Great Northern, Mr. Richards would not be able to participate in Great Northern's pending application before the Commission. J. P. Richards & Sons, Inc. is clearly "an organization in which [Mr. Richards] has a direct and substantial interest," within the meaning of subsection (2)(D), quoted above; and the existence of a contract between that organization and Great Northern would constitute "an arrangement concerning prospective employment" within the meaning of subsection (2)(C). Thus, reading these two provisions together, a Commission member would be disqualified from participating in the processing of an application of a company with whom his own company is actively engaging in business relations.<sup>2/</sup> In this case, however, there are currently no business relations occurring between Mr. Richards or the J. P. Richards & Son, Inc. Company and Great Northern. Thus, Mr. Richards' participation in the processing of Great Northern's application is not prohibited.

In reaching this conclusion, the Department would only add that the Legislature was careful in drafting subsection (2)(C) to foreclose the participation of an agency member not only when there was an active agreement between him and an applicant concerning prospective employment, but also when any "negotiations" were occurring between the two. Thus, if at any time during the pendency of Great Northern's application before the Commission, Mr. Richards or his corporation should even discuss the possibility of future business relations with Great

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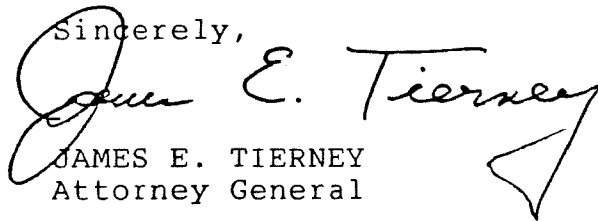
<sup>2/</sup> It might be argued that since the Legislature used only the personal pronoun "he" in subsection (2)(C), that provision would apply only when the agency member is personally engaged in business relations with an applicant, and not when such relations are occurring between the applicant and "an organization in which [the agency member] has a direct and substantial financial interest," within the meaning of subsection (2)(D). It does not appear, however, that the Legislature intended that subsection (2)(C) not apply to an agency member who is a dominant shareholder in a closely held corporation which is doing business with an applicant. Clearly, the Legislature intended to reach, in subsection (2) as a whole, all relations between an agency member and corporations which he controls, on the one hand, and persons or corporations with whom the agency member or his corporations may be dealing on the other.

Northern, he would immediately be in violation of 5 M.R.S.A. § 18 unless he disqualifed himself from future participation in the proceeding. Since your letter, however, does not indicate that such conversations have occurred, there is no reason to require such disqualification now.

Your second question is more easily resolved. As quoted above, the proscriptions of subsection (2) apply only when there are "direct and substantial financial" relations between an applicant and the "dependent children" of an agency member. 5 M.R.S.A. § 18(2)(A). Thus, even if this provision would apply to a corporation controlled by a dependent child of an agency member, it is clear that Evergreen Forest Products, Inc. is not such a company, since Mr. Richards' son is no longer his dependent. Accordingly, the activities of Evergreen Forest Products, Inc. and Great Northern have no legal bearing, as far as 5 M.R.S.A. § 18 is concerned on the participation of Mr. Richards in Great Northern's application.

I hope the foregoing answers your questions. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY  
Attorney General

JET/ec

cc: Hon. Charles P. Pray,  
President of the Senate

Hon. John L. Martin  
Speaker of the House

Ray Owen, Jr.,  
Chairman, Land Use Regulation Commission

John P. Richards, Jr.  
Member, Land Use Regulation Commission