

MAINE STATE LEGISLATURE

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

May 5, 1986

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

Dear Speaker Martin:

This will respond to your request for an opinion from this office regarding whether the Executive Director of a provider of services pursuant to a contract with the Bureau of Social Services of the Department of Human Services would be involved in a conflict of interest should he be elected to the Maine Legislature. It is the understanding of this office that your question has been prompted as a result of a Memorandum of Counsel from a member of this office to the Director of the Bureau of Social Services, suggesting that a conflict of interest might exist in the circumstances described above. For the reasons discussed below, it is the Opinion of this Department that the mere fact that a person provides contractual services to an agency of the State does not preclude him, on conflict of interest grounds, from either running for or holding a seat in the Maine Legislature.

Since a person providing contractual services to an agency of the State is performing as an independent contractor, and not as a state employee or other public official, the constitutional provisions pertaining to separation of powers (Me.Const. Art. III, §§ 1 and 2) and incompatibility of offices (Me.Const. Art. IV, pt. 3, § 11; Me.Const. Art. IX, § 2) do not apply. Similarly, common law principles of incompatibility of offices do not have application. Moreover, in this Department's view, common law principles of conflict of interest do not apply with respect to the legislative branch of

government. Accordingly, in order for a conflict of interest to exist in connection with the situation described above, it is necessary that it be premised upon a specific statute.

This Department's research has not revealed the existence of any statute which prohibits an individual from either being elected to or holding a seat in the State Legislature simply because he, or an entity with which he is associated, provides contractual services to the State. 17 M.R.S.A. § 3104 prohibits a state official from having a pecuniary interest in a contract with the State, but that statute does not apply to a private citizen doing business with the State, who seeks election to the Legislature. Moreover, nothing in the Governor's Executive Order (9 FY 83/84) or the competitive bidding statutes (5 M.R.S.A. § 1816) applies to this situation.

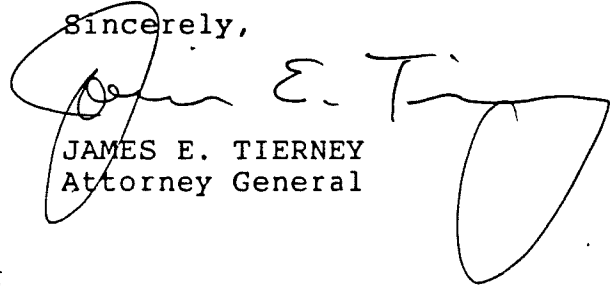
Of course, once a person becomes a member of the Legislature, he is subject to the provisions on governmental ethics established by the Legislature in 1 M.R.S.A. § 1011, et seq. One provision of the governmental ethics law would appear to have particular relevance to the situation described herein. 1 M.R.S.A. § 1014(3)(A) provides that it is presumed that a conflict of interest exists "where a Legislator abuses his office or position, including but not limited to the following cases."

A. Where a Legislator or a member of his immediate family has a direct financial interest or an interest through a close economic association in a contract for goods or services with the State, a state agency or authority in a transaction not covered by public notice and competitive bidding or by uniform rates established by the State, a state agency, authority or other governmental entity or by a professional association or organization.

This provision obviously does not prohibit a person who is doing business with the State from running for or holding a seat in the Maine Legislature. Nevertheless, once such a vendor becomes a member of the Legislature and continues to do business with the State, care must be taken that no violation of 1 M.R.S.A. § 1014(3)(A) or any other provision of the governmental ethics law will be violated.

I hope this information is helpful to you, and please feel free to call upon this office if we can be of further assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is written in a cursive style with a large, sweeping loop at the end.

JAMES E. TIERNEY
Attorney General

JET/ec
cc: Michael Petit, Commissioner
Dept. of Human Services