

MAINE STATE LEGISLATURE

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December 14, 2000

The Honorable Angus S. King, Jr.
Governor, State of Maine
One State House Station
Augusta, Maine 04333-0001

Dear Governor King:

In a letter to me dated February 11, 2000, you requested my Office to conduct an investigation to determine whether Julian Coles, the Chair of the Maine Turnpike Authority ("Authority"), violated Title 5 M.R.S.A. § 18 "by participating in proceedings of the Authority concerning the design, location and construction of a proposed turnpike interchange in the Rand Road vicinity of Portland while at the same time owning property in that same vicinity." Specifically, you have asked this Office to conduct an investigation "to determine whether there has, in fact, been a violation of the conflict of interest statute, and if so, what remedy is appropriate, . . ."

Over the past several months, members of this Office have conducted the investigation you have requested and in the process have reviewed numerous documents pertaining to the planning and development of a turnpike interchange in the vicinity of the Rand Road. This has involved our attempt to understand the history of those development plans which date back to the 1960's. This investigation has also included numerous interviews, including a lengthy interview with Mr. Coles himself, as well as

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with his former business associates and employees and others who were involved in the study which ultimately led to the unanimous recommendation that a turnpike interchange be constructed in the vicinity of the Rand Road. Throughout this process, we have stayed in contact with your Office through your chief legal counsel and have briefed him on the results of our investigation.

This report attempts to set forth our findings, conclusions and recommendations. As a result of our investigation, we conclude that Mr. Coles did not violate 5 M.R.S.A. § 18(2).¹ We also conclude, however, that Mr. Coles failed to meet the requirement of 5 M.R.S.A. § 18(7) that "[e]very executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or abstention." We believe that Mr. Coles failed to be sufficiently aware of or sensitive to the appearance of a conflict of interest created by his participation as a member and chair of the Authority in various proceedings related to the Rand Road exit, while at the same time owning and purchasing property in that vicinity. It is for that reason that Mr. Coles should have recused himself from participating in matters relating to the so-called "Rand Road" exit or, at the very least, made a more formal disclosure of his interests in the proceedings and sought guidance as to whether he should abstain from participating in those proceedings.

¹ We have also concluded that Mr. Coles did not violate the Maine Criminal Code, or abuse his position for personal gain.

HISTORICAL BACKGROUND

Rand Road runs off of Brighton Avenue in Portland and today leads into the Pine Tree Industrial Park where Mr. Coles presently owns three pieces of property with buildings thereon. It appears well-established that as far back as the mid to late 1960's, plans were being developed to construct an exit or interchange between Rand Road and the Westbrook Arterial and the Maine Turnpike. Indeed, a roadbed for a connector road from the Westbrook Arterial leading to the turnpike, prepared in the 1970's, can be seen to this day. In 1972, the Maine Department of Transportation commissioned plans for exit on and off ramps and commenced the process of condemning property on the Westbrook side of the turnpike as part of this project. As we understand it, at that time the plans contemplated that the connector road would continue all the way to I-295 and would also link up with the Rand Road. Indeed, we have been informed that the Rand Road was initially constructed with that purpose in mind. The project, however, was ultimately abandoned because of opposition by certain landowners to the plan for the construction of a connector road all the way to I-295 in Portland.

In the mid-1970's and early 1980's, the Maine Legislature considered several pieces of legislation in anticipation of the fact that the Maine Turnpike Authority would cease to exist when its outstanding bonds were paid off. In fact, by virtue of Chapter 658 of the Public Laws of 1978, the Legislature provided that the Authority would cease to exist when the outstanding bonds were paid and further provided for a barrier-type toll

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collection system. This legislation was never implemented because the bonds of the Authority were still outstanding at the time.

As a result of Chapter 595 of the Public Laws of 1981, the Legislature authorized the continuation of the Maine Turnpike as a toll highway regardless of whether the turnpike bonds were outstanding or not. The Legislature specifically authorized the use of turnpike revenues for additional interchanges on the turnpike subject to numerous conditions, including a requirement that the Department of Transportation submit "a proposed program for additional interchanges." 23 M.R.S.A. § 1974(3), as enacted by P.L. 1981, c. 595, § 3. The Legislature specifically identified as a "first priority" new or modified interchanges "to provide the necessary access for the development of industrial parks in Lewiston and Auburn." 23 M.R.S.A. § 1974(3)(I), as enacted by P.L. 1981, c. 595, § 3. An extensive list of factors was identified by the Legislature to guide the determination by the Department of Transportation and the Authority in the construction of additional interchanges or improvements to existing interchanges.

On November 22, 1983, and acting pursuant to the legislative mandate contained in Chapter 595, then Commissioner of Transportation George N. Campbell, Jr. submitted to the Maine Turnpike Authority a priority list for nine interchanges/interchange modifications, including those in Auburn and Lewiston which had been specifically identified by the Legislature. Included on the list (as No. 7) was the Westbrook Arterial extension. See Letter dated November 22, 1983 from Commissioner George N. Campbell, Jr. to David H. Stevens, Secretary-Treasurer, Maine Turnpike Authority.

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In 1984, the Authority instructed its consulting engineers to develop a ten year capital improvement report which was designed to study the existing conditions of the turnpike; the projected increase in traffic and revenue on the turnpike to 1995; the necessary improvements including new interchanges, access roads, and turnpike widening necessary to serve this increased traffic; and the various alternatives for financing the necessary improvements to the turnpike. That report was completed in September, 1986 and analyzed the impact that the nine proposed access road/interchange improvements identified in the letter of November 22, 1983 (including the Westbrook Arterial extension) would have on turnpike traffic.

Following up on this report, the Legislature enacted Chapter 457 of the Public Laws of 1987 (effective September 29, 1987), which increased the amount of revenue bonds the Authority could issue for the widening of the turnpike and for the "construction of interchanges or improvements to interchanges which are determined by the Department of Transportation and the Authority to have a sufficient relationship to the public's use of the turnpike and the orderly flow of traffic on the turnpike . . ." in accordance with the statutory criteria: *See P.L. 1987, c. 457, § 5.*

In the mid to late 1980's, while the Maine Department of Transportation and the Maine Turnpike Authority were moving ahead with plans to study additional interchanges for the turnpike, as outlined in the letter of November 22, 1983, and as authorized by the Legislature, the Pine Tree Industrial Park off of Rand Road was being developed. We have been informed that the Pine Tree Industrial Park was developed in

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that location in large part because it was widely understood that at some point in the future, the Westbrook Arterial extension would be developed providing easy access to the turnpike for occupants of the industrial park. Indeed, this appears to be reflected in the recording plat for the Pine Tree Industrial Park subdivision submitted to and approved by the City of Portland Planning Board in July, 1988, which shows an easement on the turnpike side "for Westbrook Arterial right-of-way to the City of Portland."

In early 1987, Julian Coles made his first purchase of land of three acres in the Pine Tree Industrial Park on which he built an 18,000 square foot warehouse for his company, Allen & Coles Moving & Storage. In 1989, due to the growth of his business, he expanded the warehouse to approximately 36,000 square feet. As noted earlier, the Pine Tree Industrial Park is located on Rand Road which connects to Brighton Avenue and is a short distance from Exit 8 of the Maine Turnpike. During the course of his interview with us, Mr. Coles acknowledged that at the time he purchased the land in the Pine Tree Industrial Park and decided to construct a building there for his business, he did so because of the proximity to the turnpike and the visibility his business would have from the turnpike. He also informed us, and this was confirmed in other interviews, that at the time of his original purchase in the Pine Tree Industrial Park, he was well aware, because it was well known, that a Westbrook Arterial interchange potentially involving the Rand Road, or at least being constructed in that vicinity, was a possibility and had been for many years.

In the fall of 1989, Mr. Coles was appointed by Governor McKernan to serve as a member on the Maine Turnpike Authority. As outlined above, by the time of Mr. Coles' first appointment to the Authority, several steps had already been taken by both the Authority and the Maine Department of Transportation in connection with the study of new interchanges, including a new or relocated interchange known as the Westbrook Arterial extension. Nevertheless, there continued to be delays in the interchange program during the late 1980's. As a result, there were ongoing discussions between MDOT and the Authority intended to move the interchange program forward.

In 1990, these discussions culminated in the preparation of a document between the Maine Department of Transportation and the Maine Turnpike Authority described as a "Preconstruction Agreement Regarding Development of Certain Interchange Projects." This document was designed to "establish the procedures for developing certain projects proposed by the Department . . . for construction of additional interchanges or improvements to existing interchanges, . . ." The document identified a total of eight proposed projects, including the Lewiston and Auburn "priorities," as well as the Westbrook Arterial and a proposed exit at Outer Congress Street (which is now the exit serving the Portland International Jetport).

The preconstruction agreement required the Authority to provide or arrange for all preconstruction engineering and services necessary to "(1) determine need and location, (2) obtain permits, and (3) develop all plans and maps required to construct the projects listed . . ." The Agreement also required the Authority to submit to MDOT for its

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review all location and feasibility study reports, preliminary design plans, environmental documents, final design plans, right-of-way maps, specifications, estimates and contract documents developed for the project.

The preconstruction agreement was the subject of discussion at the Authority's public meeting held on August 16, 1990, attended by Mr. Coles as a member of the Authority, and the Commissioner of the Maine Department of Transportation, as a member ex officio of the Authority. The minutes of the meeting reveal that the members of the Authority reviewed the proposed preconstruction agreement and understood that it would authorize the Authority to "manage the interchange access road program on behalf of the Maine Department of Transportation." As relevant here, the preconstruction agreement provided that the Authority would serve as MDOT's agent in carrying out what would become known as the Portland Area Interchange Study.

The Executive Director of the Authority recommended approval of the preconstruction agreement. Mr. Coles moved to approve the agreement which motion carried by a unanimous vote. The preconstruction agreement was signed that day and by its terms was to expire seven years later. The vote to approve the preconstruction agreement appears to be one of the first, if not the first, vote cast by Mr. Coles as a member of the Authority on a matter related to the Westbrook Arterial extension. Over the next several years, and indeed, until the fall of 1999, Mr. Coles, as a member and chairman of the Authority, participated in and voted on several matters related to the Westbrook Arterial extension.

In 1991, the Authority, with Mr. Coles making the motion and voting in favor, hired T.Y. Lin International, Inc., consulting engineers, to prepare feasibility studies and preliminary engineering and environmental studies "to evaluate the need for, and location and design features of, interchange alternatives to and from the Maine Turnpike for communities in the greater Portland area." See Authority minutes of May 16, 1991 and August 22, 1991. T.Y. Lin International was the prime consultant on the so-called "Portland Area Interchange Study." As part of that study, T.Y. Lin assembled a team of additional consultants, including a public participation coordinator. The public participation coordinator was Market Decisions, Inc., who was represented on the project by Evan Richert, now Director of the State Planning Office, who was also interviewed by a member of this Office.

An important part of the study team was the creation of two advisory committees - consisting of a total of 20 members - designed to "guide and critique the study team's work and accomplishments." See Final Location Report, Maine Turnpike, Portland Area Interchange Study - Westbrook Interchange, December, 1993 at 1.1. One of those advisory committees was a "Technical Advisory Committee" which was comprised of the technical committee of the Portland Area Comprehensive Transportation Committee.² The second committee was a "Policy Advisory Committee" whose members were

² The member agencies of the Portland Area Comprehensive Transportation Committee (PACTS) include Cape Elizabeth, Cumberland, Falmouth, Gorham, Portland, Scarborough, South Portland, Westbrook, Windham, Yarmouth, the Maine Department of Transportation, and the Greater Portland Council of Governments.

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appointed by the mayors of Portland, South Portland, and Westbrook, as well as the Chairman of the Falmouth Town Council. In the summer of 1992, these two committees merged into one working "Interchange Advisory Committee." Our investigation confirms that the Interchange Advisory Committee played a major role, in conjunction with T.Y. Lin International and the other study team members, in the comprehensive analysis, study and planning process that led to the various recommendations concerning the interchange needs of the greater Portland area.

During the initial phases of the study, the Interchange Advisory Committee received input from numerous organizations and individuals in the greater Portland area, including neighborhood associations, business and trade groups, environmental organizations, and government officials for the purpose of adopting a series of goals that would guide the interchange study. A major goal, and the one that was most frequently expressed, was to "relieve local roads of through traffic and shift it to the Maine Turnpike." As the study progressed, the Interchange Advisory Committee focused on four general locations where interchanges might be consistent with the established goals. Those were Outer Congress Street (the Jetport); Westbrook/Exit 8; Forest Avenue; and Auburn Street.

By August of 1992, the Forest Avenue and Auburn Street areas had been eliminated because they did not meet project goals. In particular, interchange additions or modifications at those locations were not likely to relieve local roads of through traffic, but might actually increase it. The Interchange Advisory Committee found that the Outer

Congress Street area was especially attractive in relieving through traffic as well as meeting the other articulated goals. Moreover, this location would provide improved access to the International Jetport.

Finally, the Westbrook/Exit 8 area was identified by the Interchange Advisory Committee as being helpful in meeting those goals "but only in conjunction with an Outer Congress Street interchange." Indeed, the committee found that "an interchange in both locations magnifies the benefits of shifting through traffic from local roadways to the turnpike." By October of 1993, the Interchange Advisory Committee had publicly recommended that the combined Outer Congress Street and Westbrook/Exit 8 proposal proceed to Phase II of the study.³ The Interchange Advisory Committee recommended five alternative sites for the Westbrook/Exit 8 interchange, three of which called for a connection to Rand Road and two of which did not.

The Interchange Advisory Committee's recommendations were the subject of public workshops held on October 14, 1993. The five alternatives for the Westbrook/Exit 8 interchange were clearly described and illustrated through the use of diagrams. With respect to the Westbrook/Exit 8 alternatives, several participants in the public workshops expressed support for connecting the turnpike to Rand Road as the best way of relieving traffic on local roadways. In December, 1993, T.Y. Lin International issued its "Final Location Study Report" regarding the Outer Congress Street and Westbrook/Exit 8

³ Phase II would follow acceptance of the recommendations by the Maine Turnpike Authority and would include more detailed environmental studies and designs to meet federal and state permitting requirements as well as local concerns.

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interchanges which it prepared for the Maine Department of Transportation and the Maine Turnpike Authority.

After the issuance of the Final Location Study Report, the Interchange Advisory Committee continued its work throughout most of 1994 in narrowing down the preferred alternative for each location, namely, the one for Outer Congress Street and the one for the Westbrook/Exit 8 area. With respect to the Westbrook/Exit 8 location, the cities of Portland, Westbrook, and Gorham supported the alternatives that provided for a connection to the Rand Road. Indeed, with respect to key parties of interest, there was virtually no support for any of the alternatives which did not include a connection to Rand Road.

On September 7, 1994, the Interchange Advisory Committee unanimously recommended that the Authority approve the Westbrook Arterial interchange proposal designated as W3.1 which included a connector to Rand Road. That recommendation, along with the unanimous recommendation of the committee regarding the Outer Congress Street interchange, was forwarded to both the Maine Department of Transportation and the Maine Turnpike Authority.

On November 14, 1994, the Maine Department of Transportation recommended that the Maine Turnpike Authority pursue the development of the recommended interchanges as "substantial public interest projects."

On November 16, 1994, the Maine Turnpike Authority unanimously voted to accept the recommendations of the Interchange Advisory Committee so that those

alternatives could be further pursued by submitting the necessary applications for environmental review at the state and federal levels. As Chairman of the Authority, Mr. Coles voted in favor of the resolution accepting the committee's recommendations.

By 1994, Mr. Coles' business had continued to grow and expand and, in fact, had apparently outgrown his existing warehouse space, as evidenced by the fact that his business was leasing 10,000 square feet of warehouse space on the north side of Exit 8, off-site from the Pine Tree Industrial Park. During this time period, Thomas Dunham, a real estate broker who had brokered the sale of Mr. Coles' first purchase in the Pine Tree Industrial Park, encouraged him to buy the last lot in the park still owned by the original developers so that he could enlarge his physical facility to accommodate his increasing business needs. Mr. Coles has told us that he was initially reluctant to pursue this purchase because he did not feel he could afford to do it. It was also during this time period, however, that the U.S. Postal Service was interested in leasing a building to use as a carrier annex and in May, 1995, agreed to a 10-year lease with Mr. Coles for his company's existing 36,000 square foot building. According to Mr. Coles, this lease with the postal service gave him the financial ability to go through with the purchase of Lot No. 6 in the Pine Tree Industrial Park and in May of 1995, he closed on that sale of eight acres of land. Very soon thereafter, he commenced construction of a 50,000 square foot warehouse for his company.

In 1995 and 1996, engineering work, environmental studies, and other preparations were ongoing with respect to the interchanges recommended by the

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Interchange Advisory Committee and approved by the Authority in 1994. In 1997, the preconstruction agreement which had originally been signed in 1990 was approaching its seven year expiration date. Consequently, on February 13, 1997, Mr. Coles, as chairman of the Authority, signed a revised agreement and, on March 30, 1997, voted, along with the other Authority members, to approve the revised agreement, which expires on December 31, 2007. The revised agreement covered the preconstruction development and "if the project is found to be feasible," the construction of the proposed projects including the Westbrook Arterial interchange. On April 24, 1997, Mr. Coles was reappointed to the Maine Turnpike Authority for a term which expires on August 20, 2003.

Work on the preconstruction development of the proposed projects continued throughout 1997 and into 1998. On May 28, 1998, Mr. Coles, together with the other Authority members, voted in favor of a resolution finding that the construction costs of the Westbrook Arterial interchange, as recommended by the Interchange Advisory Committee, would "have a sufficient relationship to the public's use of the Maine Turnpike and the orderly regulation and flow of traffic on the Maine Turnpike . . . so that the use of the proceeds of bonds issued by MTA is warranted to pay all or any portion of the costs of the Interchange." This resolution made the necessary findings as required by 23 M.R.S.A. § 1968(2).

In September of 1998, Mr. Coles made his last purchase in the Pine Tree Industrial Park consisting of seven acres, on which he has constructed a 50,000 square foot building housing his corporate headquarters as well as leasing space to two other businesses. The

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property had been offered for sale in 1996 and 1997 and sat on the market for one and a half to two years with little or no interest. Thomas Dunham acted as the real estate broker on behalf of the seller and approached Mr. Coles to try to interest him in the property. Mr. Coles was not interested and Mr. Dunham has informed us that he had to work very hard over a number of years to even interest Mr. Coles in the property. We have also interviewed the seller of that property and he has confirmed that Mr. Coles showed little interest in it, but ultimately did purchase the property for substantially less than what the buyer had paid in 1987.

On March 25, 1999, Mr. Coles, together with the other Authority members present, voted to authorize the Executive Director of the Authority to negotiate and enter into options to purchase mitigation sites and land necessary for the Westbrook/Rand Road interchange.

By November of 1999, the controversy surrounding Mr. Coles, which ultimately led you to refer this matter to us for investigation, became public and at the November 18, 1999 meeting of the Authority, Mr. Coles abstained from voting on matters relating to the Westbrook/Rand Road interchange. It is our understanding that Mr. Coles has continued to abstain on any Authority business pertaining to the Westbrook/Rand Road interchange.

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THE SCOPE OF OUR INVESTIGATION

Your letter of February 11, 2000 requested that this Office conduct an investigation to determine whether Mr. Coles did, in fact, violate 5 M.R.S.A. § 18, the Executive Employee Conflict of Interest statute. Accompanying your letter was a file of materials from Attorney John Campbell, apparently representing Mr. Joseph Ricci, containing various allegations of wrongdoing against Mr. Coles. These allegations were not limited to a potential violation of 5 M.R.S.A. § 18, but also implicated provisions of the Maine Criminal Code. During the early stages of our investigation, a member of this Office personally met with Attorney Campbell and other representatives of Mr. Ricci and received additional material from them regarding their allegations against Mr. Coles.

Specifically, representatives of Mr. Ricci have accused Mr. Coles of having abused his position on the Authority by affirmatively manipulating the interchange study process to favor an alternative for a Westbrook/Exit 8 interchange that included a Rand Road connector, thereby providing turnpike access for his property and business.

Moreover, Mr. Coles has been accused of using "insider" information obtained from the Authority for personal gain in connection with his purchase of land in the Pine Tree Industrial Park.

Representatives of Mr. Ricci have also made somewhat vague allegations against Mr. Coles suggesting that he had some type of "sweetheart deal" with the United States Postal Service to locate its planned distribution center in the vicinity of Rand Road. It has been suggested that Mr. Coles wanted the distribution center in the vicinity of Rand Road

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because it would provide further justification for a Rand Road connector to the planned Westbrook Arterial interchange. Related to this allegation is the suggestion that Mr. Coles' last purchase of land in the Pine Tree Industrial Park in 1998 somehow breached his fiduciary duty to the Authority to leave wetlands mitigation land available to the Maine Turnpike Authority.

As the discussion which follows will show, we have struggled to determine whether Mr. Coles had an actual conflict of interest in violation of 5 M.R.S.A. § 18(2). Ultimately, we believe that Mr. Coles should have recused himself from participating in Authority proceedings pertaining to the Westbrook Arterial interchange because of the appearance of a conflict of interest even if an actual conflict of interest did not exist.

The accusations, however, against Mr. Coles that he abused his position on the Maine Turnpike Authority by manipulating the siting of an interchange connector to the Rand Road; that he used "insider information" while on the Authority for personal gain; and that he had some type of "sweetheart" arrangement with the U.S. Postal Service, all appear to be without foundation. While Mr. Coles, in our view, used poor judgment in failing to recognize the appearance of a conflict of interest, we have uncovered no evidence to support the conclusion that he in any way abused the position of his office for personal benefit or for any other improper purpose.

A. ALLEGATIONS OF IMPROPER INFLUENCE AND/OR
MANIPULATION

One of the most serious allegations made against Mr. Coles is the claim that he attempted to exert improper influence on the Westbrook Arterial interchange issue by

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manipulating individuals and the process itself for personal gain. The thrust of this assertion is that alternatives for a Westbrook Arterial interchange without a Rand Road connector were rejected by the Interchange Advisory Committee and the Authority itself, because they did not provide access to Mr. Coles' property.

Our investigation simply does not support this accusation. We have not uncovered any evidence suggesting that Mr. Coles was involved in the work of the Interchange Advisory Committee other than, perhaps, as an observer or as someone who possessed considerable knowledge about the traffic concerns in the Westbrook/Exit 8 area. Individuals involved in the Interchange Advisory Committee process, including Evan Richert who served as the public participation coordinator, have told us that Mr. Coles did nothing to attempt to influence the committee's work or to manipulate it in any way whatsoever. The Director of the Portland Area Comprehensive Transportation Committee (PACTS) who was heavily involved in the Interchange Advisory Committee process, has also told us that Mr. Coles did nothing to attempt to influence the committee's work and that many members of the committee were highly impressed with the openness of the process adopted by the Authority in connection with the Portland Area Interchange Study.

Dana Connors, the Commissioner of the Maine Department of Transportation during a significant portion of the Interchange Advisory Committee process, confirmed for us that he observed no evidence whatsoever that Mr. Coles in any way attempted to influence the recommendations of the committee or the Authority in connection with the

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Westbrook Arterial extension and the Rand Road connector. John Melrose, Commissioner of Transportation since 1995, has told us the same thing.

In short, we have uncovered no evidence whatsoever to suggest that the recommendations of the Interchange Advisory Committee (including the recommendation for a Westbrook Arterial interchange with a Rand Road connector) or the work of the Authority's team of consultants was anything but the product of a thorough and independent study, analysis and evaluation of what would best meet the interchange needs of the Greater Portland area. Everyone we have spoken to regarding this matter has told us that the facts and the evidence "drove" the Rand Road connector recommendation and decision - not Mr. Coles.

Similarly, we have found no merit to the claim that Mr. Coles somehow "manipulated" City of Portland officials in connection with this process. We have reviewed the material produced by Mr. Ricci's representatives and find nothing in it to support the suggestion that Mr. Coles' contacts with City of Portland councilors or other officials were in any way improper or illegal.

Finally, we have found nothing to support the claim that Mr. Coles' dealings with the United States Postal Service were inappropriate in any way. As far as we have been able to determine, the 10-year lease between the Postal Service and Mr. Coles for a carrier annex was completely unrelated to any interest the Postal Service may have had in locating a distribution center in the vicinity of Rand Road. The notion that Mr. Coles wanted the Postal Service to locate the distribution center near Rand Road because it

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would provide further justification for a Rand Road connector to the Westbrook Arterial interchange, ignores the evidence that a Rand Road connector was unanimously recommended by the Interchange Advisory Committee and by the cities of Portland, Westbrook and Gorham. Indeed, there does not appear to have been any support for a Westbrook Arterial interchange without a Rand Road connector.

B. MISUSE OF INFORMATION

Mr. Coles made two separate purchases of land in the Pine Tree Industrial Park while he was a member and the Chair of the Maine Turnpike Authority during the time period (1995 and 1998) when a Westbrook Arterial interchange with a Rand Road connector was under consideration by the Authority and was in the preconstruction study and planning phases. Because of this fact, we have examined the circumstances of these purchases to determine whether Mr. Coles potentially violated the provisions of 17-A M.R.S.A. § 609 (misuse of information) which provides in its entirety as follows:

1. A person is guilty of misuse of information if, being a public servant, and knowing that official action is contemplated, or acting in reliance on information which he has acquired by virtue of his office or from another public servant, he:
 - A. Acquires or divests himself of a pecuniary interest in any property, transaction or enterprise which may be affected by such official action or information; or
 - B. Speculates or wagers on the basis of such official action or information; or
 - C. Knowingly aids another to do any of the things described in paragraphs A and B.

2. Misuse of information is a Class E crime.

Paragraphs B and C clearly have no applicability to this situation. There is absolutely no evidence that Mr. Coles' purchases of property in the Pine Tree Industrial Park, to meet the increasing demands of his business, were made for the purposes of land speculation or as a wager. The evidence is indisputable that upon making these purchases, Mr. Coles promptly began construction of buildings related to his existing business in the Pine Tree Industrial Park.

With respect to the applicability of paragraph A, we would note that we are unaware of any prosecutions having been brought pursuant to this statutory provision. Accordingly, we do not have the benefit of any judicial interpretations of the meaning and scope of this law. It appears that the crime of "misuse of information" did not exist in Maine prior to the enactment of the Maine Criminal Code in 1976.

Although the literal language of 17-A M.R.S.A. § 609 does not explicitly say so, it would appear that the purpose of this statute is to prohibit a person from using information or knowledge gained from his position as a public servant which has not been made available to the public. In other words, the statute is designed to prohibit the use of "insider" information for personal benefit or gain.

That this is the correct interpretation of 17-A M.R.S.A. § 609 finds support in the official comment to that statutory provision by the Criminal Law Revision Commission which drafted the Maine Criminal Code. That comment provides:

The aim of this section is to prevent public servants from taking advantage of their positions in order to gain personal

profits. This in turn should contribute significantly to the lessening of conflicts of interest when official discretion is to be exercised and should help to maintain the image of government processes as being strictly in the interests of the public.

It appears that section 609 was based on a similar provision found in the proposed Criminal Code of Massachusetts (Chapter 268A, section 26).⁴ That provision makes it clear that the purpose of the "misuse of information" statute is to criminalize "affirmative action by a public servant wherein he seeks to capitalize directly on information concerning forthcoming official action not yet made public which he has acquired by virtue of his office or from another public servant." *See Proposed Criminal Code of Massachusetts, Revision Commission Note, Chapter 268A, section 26 at 178 (Lawyer's Cooperative Publishing Co., 1972).*

We have found no evidence to support the conclusion that Mr. Coles' purchases of land in the Pine Tree Industrial Park in May, 1995, and then again in September, 1998, were made on the basis of information known to him because of his position on the Authority, but not available to the public. Indeed, the evidence supports just the opposite conclusion.

In the fall of 1994, the Interchange Advisory Committee unanimously recommended to the Authority and to the Maine Department of Transportation that the Westbrook Arterial interchange be constructed with a Rand Road connector. The

⁴ We are aware that in drafting the proposed Maine Criminal Code, the Criminal Law Revision Commission relied upon the Model Penal Code as well as the proposed Criminal Codes of the State of Hawaii and the Commonwealth of Massachusetts.

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Advisory Committee process itself was extraordinarily open and public, including the fact that a Rand Road connector was under serious consideration. The Authority's decision in November, 1994 accepting the committee's recommendation was also publicly known.

Similarly, by September, 1998, when Mr. Coles made his last purchase of land in the Pine Tree Industrial Park, preconstruction planning and development of the Westbrook Arterial interchange with a Rand Road connector was ongoing and well known. In both the 1995 and 1998 purchases made by Mr. Coles, the land was available on the open market for some time prior to his purchasing it and, in both cases, others sought him out as a potential purchaser. In both cases, Mr. Coles promptly began construction of buildings which were clearly visible for all to see.

In short, there is simply no credible evidence to support a claim that Mr. Coles violated 17-A M.R.S.A. § 609 by misusing knowledge or information acquired by him as a public servant and which was not otherwise available to the public. The fact that Mr. Coles purchased land in the Pine Tree Industrial Park while he was on the Authority and while the Authority was acting on matters relating to the Westbrook Arterial interchange with a Rand Road connector, is certainly relevant on the issue of whether he should have recused himself from voting on such matters because of a potential conflict of interest or the appearance of one. We have determined, however, that the evidence does not support a conclusion that Mr. Coles violated 17-A M.R.S.A. § 609 by misusing his public office for personal benefit or gain.

C. CONFLICT OF INTEREST

In your letter of February 11, 2000, you specifically requested this Office to conduct an investigation to determine whether Mr. Coles violated the provisions of 5 M.R.S.A. § 18(2). That statute, commonly referred to as the "Executive Employee Conflict of Interest" law provides, in relevant part, as follows:

2. An executive employee 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;
 - B. His partners;
 - 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; or
 - E. Any person with whom he has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22, during the preceding year.

In trying to determine whether Mr. Coles did, in fact, violate 5 M.R.S.A. § 18(2), we have struggled, primarily, with the issue of whether he had a "direct and substantial financial interest" in any proceeding in which he may have personally and substantially participated in his official capacity on the Turnpike Authority, in connection with the Rand Road connector to a Westbrook Arterial interchange. Unlike other terms and

phrases in the conflict of interest law, there is no definition of what the Legislature meant by "a direct and substantial financial interest."⁵

We have traced the legislative history of 5 M.R.S.A. § 18(2) in the hope that it might shed some light on the Legislature's intent in using the phrase "direct and substantial financial interest." Title 5 M.R.S.A. § 18 was originally enacted by the 109th Legislature as Chapter 734 of the Public Laws of 1979 (effective July 3, 1980). The legislation which was ultimately enacted as 5 M.R.S.A. § 18 was the product of the Joint Select Committee on Government Ethics which was established "to study the statutes governing conflicts of interest for state employees." See Report of Select Committee on Government Ethics, established by Study Order H.P. 1437 of the First Regular Session, 109th Maine Legislature.

As proposed by the Joint Select Committee, and as enacted by the Legislature, the original executive employee conflict of interest statute only applied to "full-time compensated state employees." Report at 3. See 5 M.R.S.A. § 18(1)(A) and (B), as enacted by P.L. 1979, c. 734, § 2. Neither the committee's report, nor any of the legislative debate on the proposal, discussed the phrase "direct and substantial financial interest." The

⁵ Title 5 M.R.S.A. § 18 defines what is meant by "executive employee," "participate in his official capacity," and "proceeding." Based upon these definitions, we believe it is clear that Mr. Coles, as a member and Chair of the Maine Turnpike Authority, was and is an executive employee and personally and substantially participated in his official capacity in a proceeding pertaining to the Rand Road connector, within the meaning of 5 M.R.S.A. § 18. Specifically, the term "executive employee" includes members of specifically delineated state boards and commissions and includes the Maine Turnpike Authority. See 5 M.R.S.A. § 18(1)(B) and 5 M.R.S.A. § 12004-F(4). To "participate in his official capacity" means to "take part in reaching a decision or recommendation in a proceeding that is within the authority of the position he holds." 5 M.R.S.A. § 18(1)(C). Finally, a "proceeding" means "a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge, accusation, arrest or other matter relating to governmental action or inaction." 5 M.R.S.A. § 18(1)(D).

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committee's report, however, did note that its proposal was designed to implement the "basic principle . . . that an employee should not take official action in a situation where he . . . may have personal economic interest." Report at 3.

The Joint Select Committee clearly saw its proposal as a narrow one. Its report states:

The Committee believes that the enactment of its proposed legislation on conflict of interest will resolve much of the confusion and controversy on this subject over the last several years. It believes that the recommended legislation balances the public's legitimate concern over the fidelity of its employees with its employees' interests in privacy and freedom to act. Public scrutiny combined with strong but narrow prohibitions seem appropriate to guide a public work force that has generally been beyond reproach. Extensive and detailed restrictions can only hurt the high quality of the public service in the state. Isolated incidences have shown the need for certain narrow restrictions, but the general welfare would only be hurt by detailed and extensive restrictions on the actions of state employees. The Committee believes that its proposed statute fairly balances these factors to ensure the continued integrity of state service.

Report at 4-5.

In 1987, the 113th Legislature authorized the Joint Standing Committee on State and Local Government to conduct "an evaluation of Maine's conflict of interest laws." The committee issued its report in January, 1988. As a result of this study, legislation was proposed and ultimately enacted which applied the executive employee conflict of interest statute to "members of the state boards and commissions as defined in Chapter 379." See P.L. 1987, c. 784, § 1. That legislation also enacted 5 M.R.S.A. § 18(7) which

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provides that "[e]very executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention." See P.L. 1987, c. 784, § 3.

The 1988 Report of the Joint Standing Committee on State and Local Government recognized the tension that potentially exists between an effective conflict of interest law and the need to encourage capable persons from the private sector to serve as members of boards and commissions.

A second aspect of the study assigned to the Committee on State and Local Government concerns the conflict of interest with which members of boards and commissions may be confronted at various times as they render decisions that may affect their financial well-being or the financial well-being of a friend or relative. This issue has been a major concern of a number of people including legislators and members of the public.

If members of boards and commissions may not represent any private interest or economic sector regulated or served by the boards and commissions, it may be difficult to find effective people to serve on boards and commissions. If there is too much latitude provided with respect to the decisions that board members may render, the opportunity for conflicts of interest are too great.

See "An Evaluation of Maine's Conflict of Interest Laws, January, 1988," at 2.

While the 1988 Study Report recommended numerous changes to the executive employee conflict of interest statute (5 M.R.S.A. § 18), it did not seek to more specifically define what was meant by a "direct and substantial financial interest."

From the foregoing, therefore, it seems clear that the phrase "direct and substantial financial interest" was intended to reach a narrow and specific type of interest. It is not enough that an executive employee have some type of personal or other interest in a

proceeding.⁶ The interest must be financial in nature. That financial interest must be direct, namely, it must be immediate, personal and without intervening factors or influences. In other words, it must not be indirect, remote or speculative and a mere possible or potential financial interest is insufficient to create an actual violation of 5 M.R.S.A. § 18(2). Finally, the financial interest must be substantial, meaning that 5 M.R.S.A. § 18(2) is not violated where the financial interest is uncertain, questionable or insignificant.⁷

During the course of our investigation of this matter, we have had significant difficulty in assessing whether Mr. Coles had a "direct and substantial financial interest" in the Authority proceedings in which he participated pertaining to the Westbrook Arterial extension with a Rand Road connector. It has been suggested that such a financial interest is present by virtue of the fact that the Rand Road connector presumably will provide easier access to the turnpike for Mr. Coles' moving business, which relies heavily upon the use of trucks. The difficulty with this suggestion is that Mr. Coles'

⁶ An example of a much broader conflict of interest statute is found in Connecticut where members of boards and commissions are prohibited from participating in any matter in which they are "directly or indirectly interested in a personal or financial sense." Conn.Gen.Stat. Ann. § 22a-42(c). *See generally Nazarko v. Conservation Commission of the Town of East Lyme*, 50 Conn.App. 548, 717 A.2d 850 (1998).

⁷ Although the legislative history of 5 M.R.S.A. § 18 makes no specific reference to the federal executive employee conflict of interest statute (18 U.S.C. § 208), it appears that Maine's law is at least loosely based on that federal law. The structures of the two laws are quite different. Nevertheless, the federal law uses language that is very similar to that found in 5 M.R.S.A. § 18(2). For example, 18 U.S.C. § 208(a) prohibits an executive employee from participating in a proceeding in which he has a "financial interest." The prohibition does not apply, however, where full disclosure has been made and there has been an advance determination that the financial interest is not so substantial or is too remote "to affect the integrity of the services which the Government may expect from such . . . employee." 18 U.S.C. § 208(b)(1) & (2).

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business already has relatively easy access to Exit 8 of the Maine Turnpike. This is not a situation where Mr. Coles has little or no access to the turnpike at the present time, and where the construction of the Rand Road connector would provide an obvious and significant financial benefit to his business. On the contrary, it is a short distance from Mr. Coles' business to Exit 8. Given the close proximity of Mr. Coles' business to Exit 8, we have been unable to quantify in any measurable way the substantiality of the "financial interest" Mr. Coles would enjoy by virtue of the construction of the Rand Road connector to a new exit on the turnpike. Whatever that financial interest might be, we do not feel comfortable in concluding that it is the type that can be fairly characterized as "direct and substantial," within the meaning and scope of 5 M.R.S.A. § 18(2).

It has also been suggested that Mr. Coles had a direct and substantial financial interest in the Authority proceedings pertaining to the Rand Road connector because, it is alleged, the value of his property and buildings in the Pine Tree Industrial Park may increase as a result. In considering this possibility, we have consulted with two highly experienced real estate brokers in the Portland area, Thomas Dunham and Joseph Boulos, both of whom have advised us that, in their opinions, turnpike access will not significantly appreciate the value of the property in the Pine Tree Industrial Park, primarily because of the fact that it is zoned for industrial not commercial use. Whether, in fact, property values in the Pine Tree Industrial Park will appreciate as a result of construction of the Rand Road connector to the turnpike is, at the very least, uncertain at this point in time. Given this uncertainty, we are reluctant to conclude that the possible

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increase in the value of Mr. Coles' property constitutes the type of "direct and substantial financial interest" within the meaning of 5 M.R.S.A. § 18(2).

Finally, we believe there is another way to look at the phrase "direct and substantial financial interest" as potentially applicable to Mr. Coles. For example, it would seem beyond question that Mr. Coles' property and business, and therefore his financial interests in the Pine Tree Industrial Park are "substantial." Similarly, the construction of a Rand Road connector to the Maine Turnpike would seem to have a "direct" impact on the businesses and owners in the Pine Tree Industrial Park, including Mr. Coles. Accordingly, regardless of whether we are able to quantify or measure how "direct" or how "substantial" the financial interest may be, it nonetheless exists.

We believe there is some merit in analyzing the phrase "direct and substantial financial interest" in this fashion. Such an approach eliminates the need to identify how the proceedings would affect the executive employee's financial interests and primarily focuses on the substantiality of those interests. The difficulty with this approach, however, is that it tends to minimize the statutory requirement that the executive employee have a "direct . . . financial interest" in the proceeding in which he is participating. In other words, is it enough to constitute a violation of 5 M.R.S.A. § 18(2) that Mr. Coles' business operations might be directly affected by the Rand Road connector, or must there be a showing of a *direct financial* interest in the proceedings in which he has participated. In the context of interpreting a similar provision in the conflict of interest statute for legislators, this Office has supported the latter view. See Op. Atty.

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Gen. No. 83-29 (June 10, 1983) (in the context of 1 M.R.S.A. § 1014(1)(A), "the financial benefit to the legislator or his immediate family must be directly related to and derived from the proposed legislation which affects the enterprise in which the employer or client has a direct financial interest.")

Given our prior opinion in 1983 and given the absence of a statutory definition of the phrase "direct and substantial financial interest," we are not inclined to conclude that Mr. Coles, in fact, violated 5 M.R.S.A. § 18(2).⁸

As noted above, however, 5 M.R.S.A. § 18(7), enacted by P.L. 1987, c. 784, § 3 (effective August 4, 1988) requires that "[e]very executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or abstention." We believe that Mr. Coles failed to be sufficiently aware of the appearance of a conflict of interest created by his participation as a member and chair of the Maine Turnpike Authority in various proceedings relating to the so-called Rand Road exit, while at the same time owning and purchasing property and business interests in that vicinity that would be affected by those proceedings. We believe that Mr. Coles should have recused himself from voting on matters relating to the Rand Road exit or, at the very least, made a more formal disclosure of his property and business interests in the Pine Tree Industrial Park.

Up until November of 1997, the issue of whether Mr. Coles had an apparent or real conflict of interest in connection with the Westbrook Arterial extension (with a Rand Road

⁸ In view of our difficulty in determining whether Mr. Coles had a "direct and substantial financial interest" within the meaning of 5 M.R.S.A. § 18(2), proving that he had "knowledge" of such an interest would be equally problematic.

connector) does not appear to have been raised by anyone, at least publicly. On November 6, 1997, however, the Casco Bay Weekly published an article entitled "*The Secret Life of Exit 8*" in which it noted Mr. Coles' ownership of property "close to where the new exit would touch down." The article raised the issue that "[p]roximity to the exit would cause the value of Coles' property to increase, because trucks will have an easier time reaching the highway. The constant stream of cars could also draw retailers hungry to open stores near the new interchange, and ready to pay handsomely for land such as Coles."⁹ The article further stated:

Despite the appearance of a conflict of interest, Coles said he probably would not abstain from voting on Exit 7B. He explained he has not been part of the planning process, and said he isn't convinced he would welcome the change – especially if it meant he would have to move. 'Where would I go?' he said, echoing the words of concerned homeowners. 'It would cause me a lot of hardship if this area did change. If I can no longer operate here, then I've got to go through the pain and suffering of having to build another facility, and move this whole great thing somewhere else.'

Another article published in the Maine Sunday Telegram on November 30, 1997 entitled "*Rulers of the Road*," again noted Mr. Coles' ownership of "land in the Pine Tree Industrial Park, where a new turnpike interchange is proposed and is likely to be built in the next few years, linking the turnpike to the Westbrook Arterial and to Rand Road behind the Pine Tree Shopping Center on Brighton Avenue." In the article, Mr. Coles

⁹ Although the article asserts that retailers would be eager to "pay handsomely for land such as Coles," both real estate brokers to whom we spoke pointed out that the property owned by Mr. Coles is zoned "industrial," not commercial, which significantly limits its potential increase in value. Moreover, Mr. Coles does not own raw land but, rather, land zoned industrial on which he has constructed substantial buildings.

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"said that he bought the land on Rand Road to expand his business, not to speculate on land values," and "I think people should examine my motives and hold me accountable, but I don't see a conflict."

During our interview of Mr. Coles, we questioned him about these newspaper articles and asked him whether their publication triggered in his mind a concern about at least the appearance of a conflict of interest, given his position on the Authority and his ownership of a moving business and property and buildings in the Pine Tree Industrial Park. Mr. Coles told us that he did not see an actual conflict of interest at that time, and does not now. Moreover, he informed us that following the publication of these two articles in November, 1997, the issue was not raised again by anyone, including anyone in the Governor's Office, until 1999 and, therefore, he believed that no one disagreed with his views on the matter or had a concern about it. Mr. Coles also told us that, in retrospect, he now realizes that he failed to appreciate or perceive "how it might look" to those who did not know all the facts.

Mr. Coles has explained to us that at least until 1997, no one raised a concern about his participation in Authority proceedings related to the Rand Road connector and he did not see any basis for concern either. In particular, Mr. Coles has told us that when he first purchased land in the Pine Tree Industrial Park in 1987, it was well known that a Rand Road connector to the turnpike was a possibility and had been under consideration for some time. By the time Mr. Coles was appointed to the Authority in 1989, his moving business was physically located in the Pine Tree Industrial Park and that fact was publicly

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known as well. Moreover, the process by which the Authority and its Interchange Advisory Committee arrived at the various recommendations and decisions pertaining to the Westbrook Arterial extension was extraordinarily open and involved numerous public officials from the various cities and towns affected by the proposed interchange. In essence, Mr. Coles has explained to us that he did not see an appearance of any conflict nor did he see the need to abstain or disclose anything because, in his view, it was public knowledge that a Rand Road connector was under consideration and that he owned and operated a business in the Pine Tree Industrial Park. In short, Mr. Coles appears to have assumed that there was no need or purpose in disclosing that which was already known.

In our view, the fallacy of this position is, at least, twofold. First, most members of the public do not know all the facts of this particular matter, even if the process is completely open and includes soliciting the public's input. Second, the underlying purpose of the requirement that every executive employee should endeavor to avoid the appearance of a conflict of interest is the preservation and protection of the public's confidence in the integrity of public servants and the processes in which they participate. In our view, Mr. Coles should have abstained from voting on matters related to the Rand Road connector, or, at the very least, made a more formal disclosure of his interests in the Pine Tree Industrial Park and sought guidance from the other members of the Authority, the Executive Director of the Authority, the Authority's counsel, this Office, or the Governor's Office. His failure to do so has exposed him and, by association, the Authority, to allegations of misconduct and wrongdoing that undermine the public's

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confidence in the fairness of the Authority's proceedings in this matter. Preserving the public's confidence in public agencies and institutions lies at the very heart of the requirement that executive employees endeavor to avoid the appearance of a conflict of interest, even where no actual violation of law may have occurred.

We believe that the appearance of a conflict of interest in this case was obvious and should have been recognized as such by Mr. Coles. The fact that a Rand Road connector to the turnpike was under serious consideration by the Authority; that Mr. Coles owned and operated a moving business in the Pine Tree Industrial Park on Rand Road; that Mr. Coles' business relies heavily on the use and movement of trucks; that Mr. Coles made additional purchases of land in the Pine Tree Industrial Park and constructed buildings thereon while the Rand Road connector was under consideration by the Authority, should have clearly alerted Mr. Coles to the real possibility that an appearance of a conflict existed, and that the propriety of his participation in Authority proceedings regarding the Rand Road connector could be questioned.

This is particularly true after November, 1997 following publication of two newspaper articles which explicitly and publicly raised the issue of an appearance of a conflict of interest involving Mr. Coles. Mr. Coles' failure to even appreciate the appearance problem at that time illustrates his lack of sensitivity to the perception, whether accurate or not, that his personal business and property interests played a role in his involvement in Authority proceedings related to the Westbrook Arterial extension.

Such a fundamental insensitivity to the appearance of a conflict is further reflected in Mr.

Coles' purchase of additional land in the Pine Tree Industrial Park in 1998. Even after the publication of two newspaper articles in November, 1997, Mr. Coles did not seek further guidance from anyone about a possible conflict of interest or the appearance of one and, apparently, was so blind to the appearance issue that he never questioned the appropriateness of purchasing additional property in the Pine Tree Industrial Park and, thereafter, continuing to participate in Authority proceedings related to the Rand Road connector.

Regardless of whether Mr. Coles violated the specific prohibition in 5 M.R.S.A. § 18(2) by participating in Authority proceedings in which he had a "direct and substantial financial interest," we believe that Mr. Coles failed "to avoid the appearance of a conflict of interest by disclosure or abstention" in a situation where he should have been aware of the appearance of a conflict of interest.

Although 5 M.R.S.A. § 18(7) provides that an executive employee "shall endeavor to avoid the appearance of a conflict of interest," there is no sanction provided for the failure of an executive employee to avoid such an appearance. Unlike a violation of subsection (2), it is not a civil violation for an executive employee to fail to meet the expectations of subsection (7). Indeed, it strikes us that 5 M.R.S.A. § 18(7) is designed, not to create a separate potential violation of the statute, but to send a clear message to executive employees that they should be alert to the need to evaluate their actions and interests so as to eliminate even the appearance of impropriety and thereby minimize the risk that their behavior, and the decisions of the agencies they serve, will be questioned on

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conflict of interest grounds. In our opinion, Mr. Coles failed to appreciate the message embodied in 5 M.R.S.A. § 18(7).

CONCLUSIONS AND RECOMMENDATIONS

In your letter of February 11, 2000, you asked us to conduct an investigation "to determine whether there has, in fact, been a violation of the conflict of interest statute, and if so, what remedy is appropriate, . . ."

As explained above, we do not believe that Mr. Coles, in fact, committed the civil violation described in 5 M.R.S.A. § 18(2) involving an actual conflict of interest. We do believe, however, that Mr. Coles did not adequately endeavor to avoid the appearance of a conflict of interest as contemplated by 5 M.R.S.A. § 18(7). As also explained above, there is no specific remedy or sanction provided for a failure to comply with 5 M.R.S.A. § 18(7).

Title 23 M.R.S.A. § 1965(3)(C) provides that "[t]he Governor may remove a member from the Authority only for gross misconduct." We do not believe that the actions of Mr. Coles, in failing to avoid the appearance of a conflict of interest, constituted "gross misconduct." See generally *Talberth v. Guy Gannett Pub. Co.*, 149 Me. 286, 100 A.2d 726 (1953).

Finally, we would like to point out to you that a major concern expressed to us during the course of this investigation was the fact that the Authority members received no training or other formal guidance on the conflict of interest statute and the concerns underlying the statutory admonition that executive employees avoid even the appearance

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of a conflict of interest. We would recommend that efforts be undertaken to correct this situation. In our view, the controversy surrounding Mr. Coles could have been avoided entirely had he simply recognized the need to seek guidance on the issue of a real or apparent conflict of interest.

I hope this report is helpful to you. Please feel free to contact me if I can be of further assistance.

Sincerely,



ANDREW KETTERER
Attorney General

AK:WRS:mhs