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July 1, 2003

Representative Rosaire Paradis
 2 State House Station
 Augusta, ME 04333-0002

RE: Legislative Youth Advisory Council and the Edmund S. Muskie School of
 Public Service

Dear Representative Paradis:

I am writing in response to your letter of May 30, 2003, requesting guidance on questions regarding any limitations or prohibitions that may apply to fundraising efforts by the Legislative Youth Advisory Council, which you co-chair, or its staff, the Edmund S. Muskie School of Public Service. Your letter listed a number of specific questions, and we will try to respond to them in order.

I.A. What are the legal responsibilities of the Council with respect to overseeing or directing fundraising activities conducted by the Muskie School in order to fund its statutory duties as staff to the Council?

Title 3 M.R.S.A. §168-A(10), as amended by P.L. 2003, ch. 20, §F-3 (eff. July 1, 2003), directs the Edmund S. Muskie School of Public Service to "provide *funding* and staff assistance to the council *from within its existing budgeted resources or from grants received by the school for that purpose.*" The language of this amendment to the Legislative Youth Advisory Council statute seems to provide a clear directive to the Muskie School to either absorb the cost of staffing your committee or to fund those staff costs on its own through grants. The Muskie School is a part of the University of Maine System, which is "an instrumentality and agency of the State" pursuant to 20-A M.R.S.A. §10903, independent from the Council and the Legislature. The University of Maine System receives an annual appropriation from the Legislature, but the governing body of the University decides how to allocate those funds among the various campuses and schools within the system. The new language in subsection 168-A(10), enacted as part of the recent budget bill, indicates that the Legislature is not providing any additional funding to the University of Maine System, or to the Muskie School, for this specific purpose. It is up to the Muskie School and/or the University of Maine System, however, to decide whether to seek additional funding from outside sources for these purposes,

and, if so, how to go about doing so. In any event, the Council would appear to have no legal responsibilities to oversee or direct any fundraising efforts that Muskie may choose to undertake. Of course the Council may request information from Muskie or otherwise monitor fundraising efforts should it choose to do so.

1.B. Are the records of Muskie's fundraising activities and any accounting records of funds received or expended as a result of those activities considered public records under the provisions of 3 M.R.S.A. §168-A(9)?

Although this subsection of the Council's statute expressly provides that "all records of the council" are "public records" under the Freedom of Access Act, 1 M.R.S.A. §402(3), it does not address the extent to which records of the Muskie School would be considered records of the Council. The Freedom of Access Act has very broad application by its own terms, however, and defines "public record" to include "any written, printed or graphic matter or any mechanical or electronic data compilation ... that is in the possession or custody of an agency or public official of this State ... and has been received or prepared for use in connection with the transaction of public or governmental business." 1 M.R.S.A. §402(3). As noted above, the University of Maine System is an "agency" of the state, pursuant to 20-A M.R.S.A. §10903, and providing funding and staff assistance to the Legislative Youth Advisory Council would be considered the transaction of public or governmental business. There are a number of exceptions to the definition of "public record" listed in the Freedom of Access Act, including "records that have been designated confidential by statute." We are not aware of any specific statute that would make grant writing or other fundraising activities of the schools at the University confidential, but that question perhaps should be posed to the University Counsel's Office as the legal advisors to the schools and campuses within the University of Maine System.

2. What is the legal position of the Muskie School if outside funding is not available to pay for their staffing support to the Council? Does the statutory provision that directs Muskie to staff the Council compel the Muskie School to staff the Council even if that means absorbing those costs within existing budget resources of the Muskie School or the University of Maine System?

Once again, questions as to the legal position of the Muskie School would best be addressed to its own legal counsel. Our reading of the plain language of 3 M.R.S.A. §168-A(10), as noted above, is that it directs the Muskie School to provide staff assistance to the Council "from within its existing budgeted resources or from grants." The reference to "existing budgeted resources" could include the University's annual appropriation from the Legislature since that is a general appropriation, which the University has authority to allocate among the schools and campuses within the system. If those resources are not sufficient and/or grants are not forthcoming, the Muskie School nonetheless would appear to remain obligated to assist the Council.

3. Can the Council itself participate in fundraising activities in order to secure funding to allow the Council to function as required by statute? If so, what prohibitions or limitations would apply to the Council or its legislative members with respect to those activities?

The answer to this question depends, in part, on the nature of the fundraising activities you are contemplating. If the Council wishes to provide a general letter of support to the Muskie School for inclusion in one or more grant applications to support the work of the Council, for example, that would seem to be permissible. If, on the other hand, individual Council members wish to solicit contributions to the Muskie School to support staff work for the Council, they should be mindful of the restrictions on solicitation by legislators set forth in the conflict of interest statute, 1 M.R.S.A. §1014, as well as the Bribery and Corrupt Practices Act, 17-A M.R.S.A. §§601-605.¹ Even though the Council members, in this circumstance, would be soliciting donations on behalf of a public entity, as opposed to for any personal gain, it might still be wise to avoid seeking contributions from any person who the Council member knows or reasonably should know is making the donation to influence the member in the performance of his or her duties.² A "public servant" includes any person participating as an advisor or consultant in performing a governmental function and, thus, could include all members of the Council, not just legislators. 17-A M.R.S.A. §2.

I hope this information is helpful to you. If you have additional questions or need further clarification, please let us know.

Sincerely,



G. STEVEN ROWE
ATTORNEY GENERAL

¹ 17-A M.R.S.A. §605(1) provides, in pertinent part:

1. A person is guilty of improper gifts to public servants if:

A. Being a public servant that person solicits, accepts or agrees to accept any pecuniary benefit from a person if the public servant knows or reasonably should know that the purpose of the donor in making the gift is to influence the public servant in the performance of the public servant's official duties or vote, or is intended as a reward for action on the part of the public servant[.]

1 M.R.S.A. §1014(1)(B) makes it a conflict of interest for a legislator to accept gifts "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."

² See Opinion of the Attorney General #81-19 (recommending to then Senator Judy C. Kany that she exercise similar caution in soliciting donations to the Kennebec River Future Commission).