

Section 4. Improper Compensation and Representation by State Employee

1. A person is guilty of improper compensation and representation by state employee if, otherwise than as provided by law for the proper discharge of official duties, he intentionally or knowingly, directly or indirectly:

A. being a state employee, receives or requests compensation from anyone other than the state or a state agency, in relation to any particular matter in which the state or a state agency is a party or has a direct and substantial interest; or

B. gives, promises or offers such compensation to a state employee; or

C. being a state employee, acts as agent or attorney for anyone other than the state or a state agency in prosecuting any claim against the state or a state agency, or as agent or attorney for anyone in connection with any particular matter in which the state or a state agency is a party or has a direct and substantial interest.

2. A member of the state legislature shall be subject to subsections 1A and 1C only in relation to a particular matter in which the state or a state agency has a direct and substantial financial interest other than collection of taxes, criminal fines or penalties, and fees or charges for permits or licenses, and corporation fees.

3. A special state employee shall be subject to subsections 1A and 1C only in relation to a particular matter (A) in which he has at any time participated as a state employee, or (B) which is or within one year has been, a subject of his official responsibility, or (C) which is pending in the state agency in which he is serving. Clause (C) of the preceding sentence shall not apply in the case of a special state employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

4. This section shall not prohibit:

A. a state employee from taking uncompensated action, not inconsistent with a faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings, with respect to those proceedings; or

B. a state employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility, provided that the state official responsible for appointment to his position approves; or

C. a present or former special state employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the state, provided that the head of the special state employee's department or agency has certified in writing that the interest of the state requires such aid or assistance and the certification has been filed with the state secretary; or

D. a state employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

5. Improper compensation and representation is a class D crime.

December 10, 1973 29A-11

Section 5. Improper Compensation and Representation by Former State Employee

1. A person is guilty of improper compensation and representation by former state employee if:

A. being a former state employee, he knowingly acts as agent or attorney for, or receives compensation directly or indirectly from anyone other than the state or a state agency, in connection with any particular matter in which the state or a state agency is a party or has a direct and substantial interest and in which he participated as a state employee while so employed;

B. being a former state employee, within one year after his last employment has ceased, he appears personally before any court or agency of the state as agent or attorney for anyone other than the state in connection with any particular matter in which the state or a state agency is a party or has a direct and substantial interest and which was under his official responsibility as a state employee at any time within a period of two years prior to the termination of his employment;

C. being a partner of a former state employee, he knowingly engages, during a period of one year following the termination of the latter's employment by the state in any activity in which the former state employee is himself prohibited from engaging by subsection 1A or;

D. being a partner of a state employee he knowingly acts as agent or attorney for anyone other than the state in connection with any particular matter in which the state or a state agency is a party or has a direct and substantial interest and in which the state employee participates or has participated as a state employee or which is the subject of his official responsibility.

2. If a partner of a member of the state legislature or of a special state employee is also a member of another partnership in which the member of the state legislature or special or former employee has no interest, the activities of the latter partnership in which the member of the state legislature or special or former employee takes no part shall not thereby be subject to subsections 1C or 1D.

3. This section shall not prevent a present or former special state employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the state provided, that the head of the special state employee's department or agency has certified in writing that the interest of the state requires such aid or assistance and the certification has been filed with the state secretary.

4. Notwithstanding any provision of this section a former elected official, including a former member of the state legislature may act as private legislative counsel or private legislative agent at any time following the termination of his term of office.

5. Improper compensation and representation by former state employee is a class D crime.

Section 6 Improper Financial Interest of State Employee

1. A person is guilty of improper financial interest of state employee if, being a state employee, he participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning ,rospective employment, has a financial interest.

2. It shall not be a violation of this section:

A. if the employee first advises the state official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the state may expect from the employee; or

B if, by general rule or regulation approved by the attorney general, the financial interest has been exempted from the requirements of subsection 2A as being too remote or too inconsequential to affect the integrity of state employees' services.

3. Improper financial interest of state employee is a class D crime.

Section 7. Improper Financial Interest in Contracts of State Agency

1. A person is guilty of improper financial interest in contracts of state agency if, being a state employee, he has a financial interest, directly or indirectly, in a contract made by a state agency, in which the state or a state agency is an interested party, of which interest he has knowledge or has reason to know.

2. This section shall not apply:

A. if such financial interest consists of the ownership of less than one per cent of the stock of a corporation; or

B. to a state employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest; or

C. to a state employee other than a member of the state legislature who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made through competitive bidding and his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten per cent of the total proprietary interests therein; or

D. to the interest of a member of the state legislature in a contract made by an agency other than the state legislature or either branch thereof, if his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten per cent of the total

State of Maine

December 12, 1973 29A-15

proprietary interests therein, and the contract is made through competitive bidding and he files with the state secretary a statement making full disclosure of his interest and the interests of his immediate family; or

E. to a special state employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the state secretary a statement making full disclosure of his interest and the interests of his immediate family in the contract; or

F. to a special state employee who files with the state secretary a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the governor with the advice and consent of the executive council exempts him; or

G. to a state employee who provides services or furnishes supplies, goods and materials to a recipient of public assistance, provided that such services or such supplies, goods and materials are provided in accordance with a schedule of charges promulgated by the department of health and welfare and provided, further, that such recipient has the right under law to choose and in fact does choose the person or firm that will provide such services or furnish such supplies, goods and materials.

3. Improper financial interest in contracts of state agency is a class D crime.

December 12, 1973 29A-16

Section 8. Improper Public Building or Construction Contracts

1. A person is guilty of a class D crime if:
 - A. he is a state, county or municipal employee or any person acting or purporting to act on behalf of such employee or any state, county or municipal agency; and
 - B. with respect to any public building or construction contract which is about to be or which has been competitively bid, he requires the bidder to make application to or furnish financial data to, or to obtain, or procure, any of the surety bonds or insurance specified in connection with such contract, or specified by any law, from any particular insurance or surety company, agent or broker
2. Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are hereby declared to be contrary to the public policy of the state.
3. This section shall not prevent the exercise by such employee on behalf of a state, county or municipal agency of its right to approve the form, sufficiency or manner of execution of the surety bonds and insurance furnished by the insurance or surety company selected by the bidder to underwrite said insurance bonds.

Section 9. State Commission or Board

1. No member of a state commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

2. No trustee of any public institution of higher education operated by the state shall be eligible to be appointed to or hold any other office or position with said institution for a period of three years next after the termination of his services as such trustee.

Section 10. General Provisions as to State Agency and State Employee

1. In addition to any other remedies provided by law, any violation of sections two to eight, inclusive, which has substantially influenced the action taken by any state agency in any particular matter, shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interests of the state and innocent third persons require.

2. In addition to any other remedies provided by law, the attorney general may bring a civil action against any person who has acted to his economic advantage in violation of sections two to eight, inclusive, and may recover on behalf of the state damages in the amount of the economic advantage or five hundred dollars, whichever is greater. If there has been no final criminal judgment of conviction or acquittal of the same violation, the attorney general may in the discretion of the court so recover additional damages in an amount not exceeding twice the amount of the economic advantage or five hundred dollars, and a judgment for such damages shall bar any criminal prosecution for the same violation .

3. Any state employee shall be entitled to the opinion of the attorney general upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee. All requests for such opinions shall be filed in writing directly with the attorney general. Such requests shall be submitted revealing detailed existing facts which raise a question as to whether the state is a party or has a direct and substantial interest or as to any other matter included in this chapter. If it is determined by the attorney general that the commonwealth or state agency has no substantial interest in a particular matter, including matters in which the state is a party, the attorney general shall render

State of Maine

December 12, 1973 29A-19

such an opinion. Failure of the attorney general to render an opinion within thirty days after the receipt of such request shall be construed as though an opinion favorable to such employee had been rendered. Such request shall be confidential and only the final opinion of the attorney general shall be a matter of public record.

Section 11. Improper Compensation and Representation by State or County Employee

1. A person is guilty of a class D crime if, otherwise than as provided by law for the proper discharge of official duties, he intentionally or knowingly, directly or indirectly:

A. being a state or county employee, receives or requests compensation from anyone other than the state, a state agency or a county or county agency in relation to any particular matter in which a county agency is a party or has a direct and substantial interest; or

B. gives, promises or offers such compensation to a state or county employee; or

C. being a state or county employee, acts as agent or attorney for anyone other than the state or a state agency or a county or a county agency in prosecuting any claim against a county or county agency, or as agent or attorney for anyone in connection with any particular matter in which a county or county agency is a party or has a direct and substantial interest.

2. A county employee shall be subject to paragraphs 1A and 1C only in relation to the county of which he is an employee. A state employee or a special county employee shall be subject to paragraphs 1A and 1C only in relation to a particular matter

(1) in which he has at any time participated as a state or county employee, or

(2) which is or within one year has been a subject of his official responsibility, or

(3) which is pending in the state or county agency in which he is serving.

December 12, 1973 29A-21

Clause (3) of the preceding sentence shall not apply in the case of a special state or county employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

3. This section shall not prevent:

A. a state or county employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings;

B. a state or county employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility, provided, that the state or county official responsible for appointment to his position approves;

C. a present or former special state or county employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the county, provided, that the head of the special state or county employee's department or agency has certified in writing that the interest of the state or county requires such aid or assistance and the certification has been filed with the state secretary, at whose office it shall be open to public inspection; or

D. a state or county employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

Section 12. Improper Compensation and Representation by Former State or County Employee

1. A person is guilty of a class D crime if:

A. being a former state or county employee, he knowingly acts as agent or attorney for or receives compensation directly or indirectly from anyone other than the state or a state agency or a county or a county agency in connection with any particular matter in which the county or a county agency of the same county is a party or has a direct and substantial interest and in which he participated as a state or county employee while so employed; or

B. being a former state or county employee, within one year after his last employment has ceased, he appears personally before any court or agency of the state or county as agent or attorney for anyone other than the state or county in connection with any particular matter in which the county or a county agency of the same county is a party or has a direct and substantial interest and which was under his official responsibility as a state or county employee at any time within a period of two years prior to the termination of his employment; or

C. being a partner of a former state or county employee, he knowingly engages, during a period of one year following the termination of the latter's employment by the state or county, in any activity in which the former state or county employee is himself prohibited from engaging by subsection 1A; or

D. being a partner of a state or county employee, he knowingly acts as agent or attorney for anyone other than the state or county in connection with any particular matter in which the county or a county agency of the same county is a party or has a direct and substantial

December 12, 1973 29A-23

interest and in which the state or county employee participates or has participated as a state or county employee or which is the subject of his official responsibility.

2. If a partner of a member of the state legislature or of a special state or county employee or of a former state or county employee is also a member of another partnership in which the member of the state legislature or special or former employee has no interest, activities of the latter partnership in which the member of the state legislature or special or former employee takes no part shall not thereby be subject to paragraphs 1C or 1D.

3. This section shall not prevent a present or former special state or county employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the county, provided, that the head of the special state or county employee's department or agency has certified in writing that the interest of the state or county requires such aid or assistance and the certification has been filed with the state secretary. The certification shall be open to public inspection.

Section 13. Improper Financial Interest of County Employee

1. A person is guilty of a class D crime if, being a county employee, he participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. It shall not be a violation of this section:

A. if the employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the county may expect from the employee; or

B. if, by general rule or regulation approved by the attorney general, the financial interest has been exempted from the requirement of paragraph 2A as being too remote or too inconsequential to affect the integrity of county employee's services.

Section 14. Improper Financial Interest in Contracts of County Agency

1. A person is guilty of a class D crime if, being a state or county employee, he has a financial interest, directly or indirectly, in a contract made by a county agency of the same county, in which the county or a county agency is an interested party, of which financial interest he has knowledge or has reason to know.

2. This section shall not apply:

A. if such financial interest consists of the ownership of less than one per cent of the stock of a corporation; or

B. to a state or county employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest; or

C. to a state employee who does not participate in or have official responsibility for any of the activities of the contracting agency; or

D. to a county employee who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made through competitive bidding and his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten per cent of the total proprietary interests therein; or

E. to a special county employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the state secretary a statement

State of Maine

December 13, 1973 29A-26

making full disclosure of his interest and the interests of his immediate family in the contract; or

F. to a special employee of the county who files with the state secretary a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the county commissioners approve the exemption of his interest from this section.

Section 15. County Commission or Board

No member of a county commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

Section 16. General Provisions as to County Agency and County Employee

1. In addition to any other remedies provided by law, a violation of sections two, three, eight, or sections eleven to fourteen, inclusive, which has substantially influenced the action taken by any county agency in any particular matter, shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interests of the county and innocent third persons require.

2. In addition to any other remedies provided by law, the attorney general or the district attorney may bring a civil action against any person who has acted to his economic advantage in violation of section eight or section eleven to fourteen inclusive, and may recover on behalf of the county damages in the amount of the economic advantage or five hundred dollars, whichever is greater. If there has been no final criminal judgment of conviction or acquittal of the same violation, the attorney general or the district attorney may in the discretion of the court recover additional damages in an amount not exceeding twice the amount of the economic advantage and a judgment for such damages shall bar any criminal prosecution for the same violation.

3. Any county employee other than a county commissioner shall be entitled to the opinion of the county commissioners of the county in which he is employed, upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee. Any county commissioner shall be entitled to the opinion of the attorney general upon any question arising under this chapter relating to the duties, responsibilities and interests of such county commissioner.

State of Maine

December 13, 1973 29A-29

All requests for such opinions shall be in writing and no opinion shall be rendered by the county commissioners or the attorney general except upon the submission of detailed existing facts which raise a question of actual or prospective violation of the provisions of this chapter.

Section 17. Improper Compensation and Representation by Municipal Employee

1. A person is guilty of a class D crime if, otherwise than as provided by law for the proper discharge of official duties, he intentionally or knowingly, directly or indirectly:

A. being a municipal employee, receives or requests compensation from anyone other than the city or town or municipal agency, in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest;

B. gives, promises or offers such compensation to a municipal employee; or

C. being a municipal employee, acts as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

2. A special municipal employee shall be subject to paragraphs 1A and 1C only in relation to a particular matter

(1) in which he has at any time participated as a municipal employee, or

(2) which is or within one year has been a subject of his official responsibility, or

(3) which is pending in the municipal agency in which he is serving.

Clause (3) of the preceding sentence shall not apply in the case of a special municipal employee who serves on no more than sixty days during

any period of three hundred and sixty-five consecutive days.

3. This section shall not prevent:

A. a municipal employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings; or

B. a municipal employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility, provided, that the official responsible for appointment to his position approves; or

C. a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town, provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town, at whose office it shall be open to public inspection; or

D. a municipal employee from giving testimony under oath or making statements required to be made under penalty for perjury and contempt.

Section 18.. Improper Compensation and Representation by Former
Municipal Employee

1. A person is guilty of a class D crime if:

A. being a former municipal employee, he knowingly acts as agent or attorney for, or receives compensation directly or indirectly from anyone other than the same city or town, in connection with any particular matter in which the city or town is a party or has a direct and substantial interest and in which he participated as a municipal employee while so employed;

B. being a former municipal employee, within one year after his last employment has ceased, he appears personally before any agency of the city or town as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and which was under his official responsibility as a municipal employee at any time within a period of two years prior to the termination of his employment;

C. being a partner of a former municipal employee, he knowingly engages, during a period of one year following the termination of the latter's employment by the city or town, in any activity in which the former municipal employee is himself prohibited from engaging by subsection 1A; or

D. being a partner of a municipal employee, he knowingly acts as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which the municipal employee participates or has participated as a municipal employee or which is the subject of his official responsibility.

2. If a partner of a former municipal employee or of a special municipal employee is also a member of another partnership in which the former or special employee has no interest, the activities of the latter partnership in which the former or special employee takes no part shall not thereby be subject to subsections 1C or 1D.

3. Notwithstanding the provisions of subsection 1B, a former town counsel who acted in such capacity on a salary or retainer of less than two thousand dollars per year shall be prohibited from appearing personally before any agency of the city or town as agent or attorney for anyone other than the city or town only in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which he participated while so employed.

4. This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town, provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

Section 19. Improper Financial Interest of Municipal Employee

1. A person is guilty of a class D crime if, being a municipal employee, he participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. It shall not be a violation of this section:

A. if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee;

B. if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official first files, with the clerk of the city or town, a statement making full disclosure of such financial interest; or

C. if, by statute, the financial interest has been exempted from the requirements of subsection 2A as being too remote or too inconsequential to affect the integrity of municipal employees' services.

Section 20. Improper Financial Interest in Contracts of Municipal Agency

1. A person is guilty of a class D crime if, being a municipal employee, he has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know.

2. This section shall not apply:

A. if such financial interest consists of the ownership of less than one per cent of the stock of a corporation; or

B. to a municipal employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest; or

C. to a municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made through competitive bidding and his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten per cent of the total proprietary interests therein; or

State of Maine

December 17, 1973 29A-37

D. to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract; or

E. to a special municipal employee who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the city council or board of aldermen if there is no city council or the board of selectmen approve the exemption of his interest from this section.

Section 21. Municipal Commission or Board

1. Except as provided in subsection 2, no member of a municipal commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

2. The provisions of this section shall not apply to a member of a town commission or board, if such appointment or election has first been approved at an annual town meeting of the town.

Section 22. General Provisions as to Municipal Agency and
Municipal Employee

1. In addition to any other remedies provided by law, any violation of sections two, three, eight, or sections seventeen to twenty, inclusive, which has substantially influenced the action taken by any municipal agency in any particular matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of the municipality and innocent third persons require.

2. In addition to any other remedies provided by law, the city or town may bring a civil action against any person who has acted to his economic advantage in violation of said sections two, three, eight and seventeen to twenty, inclusive, and may recover damages in the amount of such economic advantage or five hundred dollars, whichever is greater. If there has been no final criminal judgment of conviction or acquittal of the same violation, the city or town may in the discretion of the court recover additional damages in an amount not exceeding twice the amount of the economic advantage or five hundred dollars, whichever is greater, and a judgment for such damages shall bar any criminal prosecution for the same violation.

December 17, 1973 29A-40

3. Any municipal employee shall be entitled to the opinion of the corporation counsel, city solicitor or town counsel upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the chief officer of the municipal agency in which he is employed, who shall in turn request in confidence such opinion of the corporation counsel, city solicitor or town counsel on behalf of such subordinate municipal employee, and all constitutional officers and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The town counsel or city solicitor shall file such opinion in writing with the city or town clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the town counsel or city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this chapter.

Sec 23. Standards of Conduct for all State, County and
 Municipal Employees

In addition to the other provisions of this chapter, and in supplement thereto, the following are established as standards of conduct for all state, county and municipal employees for the violation of which such appropriate administrative action as is warranted may be taken by the appropriate constitutional officer or by the head of a state, county or municipal agency. No officer or employee of a state, county or municipal agency shall:

1. accept other employment which will impair his independence of judgment in the exercise of his official duties; or
2. accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority; or
3. improperly disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests; or
4. use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others or give the appearance of such action; or

State of Maine

December 17, 1973 29A-42

5. by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is unduly affected by the kinship, rank, position or influence of any party or person; or

6. pursue a course of conduct which will raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

Section 24. Form of Certifications

All disclosures and certifications provided for in this chapter and made in accordance with its provisions shall be made in writing and, unless otherwise specifically provided in this chapter, shall be kept open to inspection by the public by the official with whom such disclosure has been filed.

Section 25. Abuse of Office

A person is guilty of abuse of office, a class D crime, if he is a state, county or municipal employee and, with intent to benefit himself or another person or to harm another person, he knowingly commits an unauthorized act which purports to be an act of his office or omits to perform a duty imposed on him by law or clearly inherent in the nature of his office.

Section 26. Misuse of Information

1. A person is guilty of misuse of information, a class D crime, if, being a state, county or municipal employee and knowing that an official act is contemplated or that official responsibility will be exercised or in reliance on information which has not been made public which he has acquired by virtue of his office or from another state, county or municipal employee, he:

A. acquires or divests himself of a pecuniary interest in any property, transaction or enterprise which may be affected by such official act, exercise of official responsibility or information;

B. speculates or wagers on the basis of such official act, exercise of official responsibility or information; or

C. aids another person to do any of the foregoing.

2. It shall not be a violation of this section if the actor complies with the exemption provisions of subsection 4 of section 4, subsection 2 of section 6, subsection 2 of section 7, subsection 3 of section 11, subsection 2 of section 13, subsection 2 of section 14, subsection 3 of section 17, subsection 2 of section 19, or subsection 2 of section 20; or if the actor obtains a favorable opinion pursuant to subsection 3 of section 10, subsection 3 of section 16, or subsection 3 of section 22.

Section 27. Public Service Corporation or Racing License

1. A person is guilty of a class D crime if:
 - A. being a public service corporation or racing licensee, he appoints, promotes, reinstates, suspends or discharges any person employed by or seeking employment from such corporation or licensee, at the request of any elected state, county or municipal employee or any member of the judiciary or any person who is a candidate to be or has been elected to be such an employee or who has been selected to be a member of the judiciary; or
 - B. being an elected state, county or municipal employee or a member of the judiciary or a person who is a candidate to be or has been elected to be such an employee or who has been selected to be a member of the judiciary, he directly or indirectly advocates, opposes or otherwise interferes in the appointment, promotion, reinstatement or retention of any person employed or seeking employment from any public service corporation or racing licensee.
2. Nothing in this section shall be construed to prohibit the writing and acknowledgment of letters of recommendation based on personal knowledge of the person recommended.
3. As used in this section, "public service corporation or racing licensee" means any common carrier, electric light, gas, telegraph, telephone or water company or any licensee conducting a horse racing meeting under Title 8.

Comment

Chapter 29A is a complex set of provisions dealing with conflict of interest and related problems. It needs to be seen as a whole before any detailed examination can fruitfully be undertaken of any of its parts.

There are three fundamental parts to the chapter. One is composed of sections 2 and 3 which are, in essence, comprehensive bribery statutes. The second is composed of the central conflict of interest rules which are contained in sections 5 through 27. The third component is section 1 which contains the detailed definitions which are required for the substantive provisions of the chapter.

Source: This chapter is based upon chapter 268A of the Proposed Criminal Code of Massachusetts. Most of sections 5 through 27 is presently the law in Massachusetts, however.

Current Maine Law: Chapter 25 of Title 17 contains the relevant statutes, in particular, sections 601, 602, 603, 605 and 606.

§601: Whoever gives, offers or promises to an executive, legislative or judicial officer, before or after he is qualified or takes his seat, any valuable consideration or gratuity whatever, or does, offers or promises to do any act beneficial to such officer, with intent to influence his action, vote, opinion or judgment in any matter pending, or that may come legally before him in his official capacity shall be punished by a fine of not more than \$3,000 or by imprisonment for not more than 5 years. Whoever accepts such bribe or beneficial thing, in the manner and for the purpose aforesaid, shall forfeit his office, be forever disqualified to hold any public office, trust or appointment under the State and shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 10 years. Sheriffs and deputy sheriffs within the several counties and constables, marshals, deputy marshals and other officers of police of the several cities and towns are declared to be executive officers within the meaning of this section. The enumeration of such officers shall not be held to exclude any other executive officer not specially mentioned herein.

§602: Whoever directly or indirectly gives, offers or promises a valuable consideration or gratuity to any person not included in section 601, with intent to induce such person to procure for him by his interest, influence or any other means any place of trust in the State; and whoever, not included as aforesaid, accepts the same in the manner and for the purpose aforesaid shall be forever disqualified to hold any place of trust in the State, and be punished by a fine of not more than \$300 and by imprisonment for less than one year.

§603: Whoever corruptly gives, offers or promises a valuable consideration or gratuity to any person summoned, appointed, chosen or sworn as a juror, arbitrator, umpire or referee, auditor or appraiser of real or personal estate, with intent to influence his opinion or decision in any matter pending or that may come legally before him for decision or action; and whoever corruptly or knowingly receives the same, in the manner and for the purpose aforesaid, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 5 years.

§605: If any sheriff, deputy sheriff or constable receives from any person money or other valuable thing as an inducement for omitting or delaying to sell property on execution, to arrest any defendant and carry him before a judge or to prison or to perform any other official duty, he shall be deemed guilty of malfeasance in office and shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 2 years.

§606: Whoever attempts improperly to influence a juror, or anyone drawn, appointed or sworn as such, or an arbitrator, referee or commissioner appointed by a court of probate in relation to any matter pending, or that may come legally before him for action or decision; and whoever drawn, summoned or sworn as a juror promises or agrees to give a verdict for or against a person in any case, or receives any paper, information or evidence relating to any matter, for the trial of which he is sworn, without the authority of the court or officer before whom such matter is pending and without immediately disclosing it to such court or officer, shall be punished by a fine of not more than \$200 and by imprisonment for not more than 3 months.

The Draft: (1) Sections 2 and 3. These are the traditional bribery offenses where something of value changes hands, or is solicited or offered with the intention that official acts or decisions be influenced. The most corrupt form of this is in section 2 which speaks expressly in terms of "influence." Section 3, on the other hand, involves the trading of "anything of substantial value" rather than "anything of value" as is required in section 2. In addition, section 3 is written in terms of the substantial value being given "for or because of" an official act, not necessarily to influence the act, and may be for acts already performed. Accordingly, the penalty for section 2 is higher than for 1.

One question for consideration by the Commission is whether the bribery sections should include corruption of voters and officials of political parties, as does the New Hampshire Criminal Code, section 640:2. Also, after reviewing the scope of this chapter, the Commission should also consider whether it might be so threatening to persons involved in the business of government and in the political process that there should be included something like section 640:1 of the New Hampshire Code: "Nothing in this chapter shall be construed to prohibit the giving or receiving of campaign contributions made for the purpose of defraying the costs of a political campaign. No person shall be convicted of an offense solely on the evidence that a campaign contribution was made, and that an appointment, or nomination was subsequently made by the person to whose campaign or political party the contribution was made."

(2) Sections 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22. These parts of the chapter represent similar prohibitions separately imposed on state employees (4-6, 7-10), county workers (11-16) and municipal officials (17-22).

There are three important themes which run through these important sections. One is that it is often the case that merely disclosure of the employees interest is required. That is, there are specific exemptions from the prohibitions defined in the particular sections for those who follow the requirements of disclosure. These requirements are that the supervisor of the employee approve what would otherwise be a forbidden conflict, e.g., section 4, subsections 4B and 4C. In addition, it should be noted that public employees are given the right to an advisory opinion concerning whether a conflict exists, e.g. subsection 3 in sections 10, 16 and 22. The third theme is that "special" employees, defined in subsections 13, 14 and 15 of section 1, are

given a broader scope of relationships with the government than are those who are regular employees. The basic differences which are recognized by these definition provisions are that the special employee is either uncompensated for his government work, or is a part-time employee, or is permitted outside employment in addition to his government service. It is expected that the bulk of county and municipal employees would thus be classified as "special." It should be noted that these definitions sections operate on classifications of employees to be made by the particular government agency involved. This proved to be a feasible, but complex, process in Massachusetts, involving a number of meetings with many county and municipal officials to explain the new law and to help them with the classification process. But it is a classification system that is quite necessary if local government is to continue relying heavily in its staffing on those who are not career officials in any realistic sense.

There are seven basic prohibitions, with criminal penalties, which are made to apply to state, county and municipal officials, and in some cases, to their partners.

1. A present employee is not permitted compensation from anyone other than his government employer in regard to a matter in which the government has an interest. Subsection 1A of sections 4 (state), 11 (county), and 17 (municipal).

2. A present employee is not permitted to represent a private party asserting a claim against the government, or in a matter in which the government has an interest. Subsection 1B of sections 4 (state), 11 (county), and 17 (municipal).

3. A former employee is not permitted private compensation regarding a matter in which the government has an interest and which he was involved in while a government employee. Subsection 1A of sections 5 (state), 12 (county), and 18 (municipal). The partners of former employees are similarly prohibited for a period of one year following termination of the government employment. Subsection 1C of the above sections.

4. A former employee is not permitted to appear before a court or agency for anyone in connection with a matter in which the government has an interest and which he had some responsibility for during a two year period prior to termination of his government employment. Subsection 1B of sections 5 (state), 12 (county), and 18 (municipal).

State of Maine

December 20, 1973 29A-50

5. Partners of government employees are prohibited from representing anyone in connection with anything which the government has an interest in and which the government employee was involved in. Subsection 1D of section 5 (state), 12 (county), and 18 (municipal).

6. A government employee is not permitted to perform his official duties in regard to a matter which he, his family, his partner, or a business organization with which he is connected, has a financial interest. Subsection 1 of sections 6 (state), 13 (county), and 19 (municipal).

7. A government employee is not permitted to have a financial interest in a contract made by the government. Subsection 1 of sections 7 (state), 14 (county), and 19 (municipal).

(3). Sections 9, 15, 21 and 23. These sections represent prohibitions which do not include criminal penalties. The first three sections (9, 15 and 21) prohibit the appointment of former members of boards and agencies to any office or position under the supervision of the board or agency. Section 23 sets out general standards of conduct for all government employees designed to enhance public faith in the integrity of government functions.

(4) Sections 25, 26 and 27. Sections 25 and 26 impose criminal penalties for intentional abuse of public trust. The first requires that there be an intention to benefit the public employee or to harm another; the second entails using information that is not public in order to seek a financial profit for himself. Section 27 prohibits public employees from influencing employment matters in regard to public services corporations or racing operators.